Property and the Family in Biblical Law

Raymond Westbrook

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PREFACE

My research in biblical law began within the confines of a law faculty and it is not surprising therefore that my early papers on the subject were published in law journals.

Unfortunately, the result has been to put these studies beyond the knowledge or reach of biblical scholars. A number of students had therefore suggested that I reprint those articles in a format accessible to biblical scholarship, and when I put this suggestion to Dr Philip Davies, Director of the Sheffield Academic Press, he very generously agreed to their publication by the Press as a single volume of collected essays.

The present volume contains five previously published essays, all connected with the theme of family property in biblical law. I have not attempted to revise them in any way; instead, I have added two previously unpublished essays on the same theme and an Introduction that seeks to delineate the general framework of the family and inheritance law within which the special rules discussed in the individual chapters operated. I have also updated the bibliography to include relevant studies published since the original appearance of my own articles.

Chapters 1-3 first appeared in Volume 6 of the *Israel Law Review* for 1971 (pp. 29-38, 209-25, and 367-75, respectively); Chapter 4 appeared in Volume 24 of the *Revue internationale des droits de l'antiquité* (3rd series) for 1977 (pp. 65-87); and Chapter 5 in Volume 32 of the same journal for 1985 (pp. 97-127). Chapter 6 was presented as a lecture to the Department of Civil Law of the University of Edinburgh in May 1990, and Chapter 7 was presented as a paper to the Society of Biblical Literature International Meeting in Sheffield, England, in August 1988.

The book is, then, a collection of essays rather than a homogeneous study. I can only hope that any inconvenience felt by the reader as a result will be outweighed by the convenience of being able to find the book in the library.

Raymond Westbrook
The Johns Hopkins University
October 1990

ABBREVIATIONS

AASOR	Annual of the American Schools of Oriental Research
AB	Anchor Bible
AnBib	Analecta biblica
ANET	J.B. Pritchard (ed.), *Ancient Near Eastern Texts*
AOAT	Alter Orient und Altes Testament
ArOr	*Archiv orientálni*
BA	*Biblical Archaeologist*
BASOR	*Bulletin of the American Schools of Oriental Research*
Bib	*Biblica*
BibOr	*Biblica et orientalia*
BO	*Bibliotheca orientalis*
CBQ	*Catholic Biblical Quarterly*
CE	Codex Eshnunna
CH	Codex Hammurabi
CL	Codex Lipit-Ishtar
CRAIBL	*Comptes rendus de l'Académie des inscriptions et belles-lettres*
DBSup	*Dictionnaire de la Bible, Supplément*
HL	Hittite Laws
HTR	*Havard Theological Review*
HUCA	*Hebrew Union College Annual*
ICC	International Critical Commentary
JAOS	*Journal of the American Oriental Society*
JARCE	Journal of the American Research Centre in Egypt
JBL	*Journal of Biblical Literature*
JCS	*Journal of Cuneiform Studies*
JEA	*Journal of Egyptian Archaeology*
JESHO	*Journal of the Economic and Social History of the Orient*
JJP	*Journal of Juristic Papyrology*
JNES	*Journal of Near Eastern Studies*
JQR	*Jewish Quarterly Review*
JSOT	*Journal for the Study of the Old Testament*
JSS	*Journal of Semitic Studies*
MAL	Middle Assyrian Laws
NBL	Neo-Babylonian Laws
Or	*Orientalia* (Rome)
OTL	Old Testament Library

OTS	*Oudtestamentische Stüdien*
RA	*Revue d'assyriologie et d'archeologie orientale*
RB	*Revue biblique*
RHA	*Revue hittite et asiotique*
RHD	*Revue historique de droit*
RHDFE	Revue historique de droit français et étranger
RIDA	*Revue internationionale des droits de l'antiquité*
SDIOAP	Studia et Documenta ad Iura Orientis Antiqui Pertinentia
	Vorderasiatische Bibliothek
UF	*Ugarit-Forschungen*
VAB	Vorderasiatische Bibliothek
VSpir	*Vie spirituelle*
ZA	*Zeitschrift für Assyriologie*
ZAW	*Zeitschrift für die alttestamentliche Wissenschaft*

Publications and editions of cuneiform texts are cited by the abbreviations of the Chicago Assyrian Dictionary (CAD).

INTRODUCTION

In ancient Israel, the principal source of income was not contract, as in modern society, but property, and the most important property for these purposes was agricultural land. At the same time, the principal economic unit was the family, which provided the framework for exploitation of the land and for distribution of the income from it. Small wonder then, that the biblical law of property was concerned less with the efficient use and transfer of a commercial asset than with protecting the rights of the family to the source of their economic survival, not only against outsiders but even against individual members of the family itself.

The following chapters discuss the special rules developed by biblical law to maintain the link between property and family and to bend ownership of property to the goal of ensuring the family's continuation. The purpose of this introduction is to explain the context in which those special rules operated: the nature of biblical law, of the family as a legal unit, and of ownership, and the normal pattern of inheritance of family property.

1. *Biblical Law*

The sources of law in the Bible consist only of isolated fragments, but fortunately for our understanding of them, the law that they represent stood in no such isolation. Biblical law was part of a much wider legal tradition that extended across the whole of the ancient Near East. Although its roots may be more ancient,[1] the availability of written legal sources from the mid-third millennium onwards enables us to

1. See N. Yoffee, 'Aspects of Mesopotamian Land Sales', *American Anthropologist* 90 (1988), pp. 119-30, esp. pp. 127-28, where the pattern of prehistoric urban settlement in the Jordan valley is linked to legal practices in 2nd millenium Babylonia.

trace its diffusion along with that of cuneiform writing, through the academic traditions of the law codes, through royal edicts and through the many documents of practice. That biblical law was heir to the cuneiform traditions can be seen from their reflection not only in the biblical law codes but in all genres of biblical literature, from wisdom to narrative. Like all other parties to the tradition, the biblical system was independent, accepting rules selectively and developing special ones of its own, but it shared so much of the common conceptions and practices that even its most parochial norms are thrown into relief when placed against the background of the surrounding systems. It is a context constructed from evidence no less fragmentary than the biblical, and as we shall see in the course of the following chapters, the biblical sources make no mean contribution themselves to the understanding of Sumerian or Ugaritic law.[1]

2. *The Family*

The association between family and property permeates the basic terminology: in Gen. 7.1, God orders Noah, 'Go into the ark, with all your house...' The word 'house' of course does not refer to bricks and mortar, but to the members of Noah's family, who are enumerated in v. 7: 'Noah, with his sons, his wife, and his sons' wives...' The term 'house' therefore describes a patriarchal family, including married adults and presumably their children, all under the authority of a single head.

When this unit is referred to objectively, i.e., to include the head, it is called a 'father's house' (*byt 'b*). Gottwald[2] distinguishes between the true *byt 'b* of the current head of household, and a larger social unit such as a tribe or dynasty which is fictitiously conceived as a *byt 'b* The latter may carry the name of a founding ancestor, for example, the tribe of *byt* Joseph or the dynasty of *byt* David, or may merely

1. For this 'diffusionist' view of ancient Near East law, see esp. S. Paul, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (VTSup, 18; Leiden: Brill, 1970), pp. 99-105 and R. Westbrook, 'The Nature and Origins of the Twelve Tables', *Zeitschrift der Savigny-Stiftung* (*Rom. Abt.*) 105 (1988), pp. 82-97. For reservations as to this view, see M. Malul, Review of Westbrook, *Studies in Biblical and Cuneiform Law*, *Orientalia* 59 (1990), p. 86.

2. See N.K. Gottwald, *The Tribes of Yahweh* (New York: Orbis, 1979), pp. 285-92, esp. p. 287.

imply it, as in 1 Sam. 2.28 where the reference to God's favour to the 'house of the father' of Eli must be to Eli's ancestor, presumably Moses.[1] In this study we are concerned with the true *byt 'b*, the living family. Thus in Gen. 47.12 we are told:

> Joseph sustained his father and his brothers and all his father's house with bread, down to the little ones.

In spite of his importance, Joseph is still not the head of the family, which is referred to as the house of his father, namely Jacob. But 'house' can have a different connotation. In Gen. 31.14, Laban's daughters, Rachel and Leah, complain: 'Have we still an inheritance share in our father's house?' The reference here is clearly not to persons nor to a dwelling but to the family assets under the father's control. The further dimension of 'house' as inheritable property is emphasized by the prophet Micah in his protest against the seizure of family estates (2.2):

> They covet fields and seize them,
> Houses, and take them away;
> They oppress a man and his house,
> A person, and his inheritance.

Parallelism forms an important rhetorical device in this verse. The first parallel is two types of real estate, fields/houses, which are the object of parallel verbs: seize/take away. Both verbs have technical, legal meanings. They refer not to simple acts of force but to specific legal (or illegal) activities. The verb translated 'seize' (*gzl*) denotes the acquisition of property by an abuse of authority, either by an official or by a creditor wrongfully exercising his right of distraint.[2] The verb translated 'take away' (*nś'*) denotes confiscation of property, often in the context of a royal grant. The king confiscates (*nś'*) land and re-allocates it (*ndn*) to a loyal subject.[3]

1. The question of Eli's ancestry is summarized by P.K. McCarter, *I Samuel* (AB; New York: Doubleday, 1980), pp. 91-93. Further confusion is caused by the Priestly source's occasional use of *byt'b* as a metaphor for one of the larger units in order to create pseudo-kinship for the genealogies in the schematic account of Israel's period in the desert prior to entering the promised land, e.g., Num. 17.16-26; 26.23; cf. Judg. 10.1 (*ibid.*, pp. 287-90).

2. R. Westbrook, *Studies in Biblical and Cuneiform Law* (Cahiers de la Revue Biblique, Paris, 26; 1988), pp. 23-30.

3. J.C. Greenfield, '*Našû-nadānu* and its Congeners', in *Essays on the Ancient*

The second parallel presents the house as an abstract family asset (house/inheritance), and it is the object of a verb with an appropriate legal meaning. The verb translated 'oppress' (*'šq*) refers to the denial of a person's legal due, as in the case of the day labourer denied his wages (Deut. 24.14-15).[1] What is being denied here is the man's right to inherit his family estate, his 'house'. The prophet thus shows how powerful oppressors deprive a family of its ancestral property, confiscating it from one generation and denying the next access to it.

As Stager has shown,[2] the 'father's house' represents a socio-economic reality in Israelite settlement, namely a cluster of dwellings forming a single household of up to three generations. The term is by no means confined to Israel, however; its equivalent in Sumerian (é-a-ba) and Akkadian (*bīt abim*) has the same three meanings. In Codex Hammurabi (CH) a man can found his 'house', i.e., family, by adopting a son (191), and his sons will then inherit the 'property of the father's house', i.e., of the estate (níg-ga é-a-ba: 165-7), while a daughter awaiting marriage still lives in her father's house, i.e., the dwelling (130).

3. *Ownership and its Limits*

From the legal point of view, what distinguishes the 'father's house' as a unit in both Mesopotamia and Israel is the existence of a single head of household who is the sole owner of the household's assets, notwithstanding the existence of adult sons, even married and with children, within the household. The sons will eventually inherit those assets on their father's death, but until that time their property rights are merely potential. In Israel, the landlessness of sons during their father's lifetime is an essential factor in the rationale of the levirate, as we shall see in Chapters 2 and 4, while from CH 7 we learn that a son, like a slave, could not sell family property without his father's permission.[3]

Near East in Memory of J.J. Finkelstein (Hamden, 1977), pp. 87-91.

1. Westbrook, *Studies*, pp. 35-38.

2. L.E. Stager, 'The Archaeology of the Family in Ancient Israel', *BASOR* 260 (1985), pp. 18-23. Cf. Gottwald, *Tribes*, pp. 291-92, and C.H.J. de Geus, *The Tribes of Israel* (Amsterdam, 1976), pp. 134-35.

3. 'If a man buys or receives from the son or slave of a man silver, gold, a slave or slave-woman, an ox, a sheep, an ass or anything else without witnesses

Nonetheless, the sons' potential rights could severely inhibit their father's powers over the family property, in particular the land that constituted his 'house'.[1] While the father could theoretically sell or give away the land, he could not thereby defeat the rights of the heirs. A gift of land would be valid for the lifetime of the donor only, after which the donor's heirs could reclaim it from the donee or his heirs. It was this principle that led Abraham to refuse the offer of the Cave of Machpelah as a free gift from its owner (see Chapter 1). But even selling the land might not achieve its permanent alienation. For where the land has been sold at under-value because of pressure of debts, so that it amounts to the same as the seizure of a pledge, the owner has the right to redeem the land as if it had been a pledge, that is, at the original price, and if he cannot make use of this right, then it is still available to his heirs against the purchaser or his successors in title. Indirect evidence for this right is set out in Chapter 5, but since its original publication a document from Emar has been published which provides an express statement thereof:[2]

1-4 Yadi-Bala son of Yairu owed 20 shekels of silver to Puhu son of Ummanu and 10 shekels of silver to Abi-Sin son of Zu-Anna, and could not repay it.

5-9 Now Yadi-Bala has sold his house to Puhu and Abi-Sin for 30 shekels of silver as full price and has handed over to them the old tablet of his house that was sealed with the seal of Ninurta.

10-12 If in the future Yadi-Bala repays the 30 shekels of silver to its owners in a single day, he may take his house.

13-16 If not, and if two days have passed, whoever in the future claims this house may pay the same amount of silver and take his house.[3]

Only by paying the full value could a purchaser be free of future claims, whether by vindication or redemption, since the purchase

and contract, he is a thief—he shall be killed.'

1. For other possible categories of family property subject to the same rights, see the discussion in Westbrook, 'Restrictions on Alienation of Property in Early Roman Law', in *Essays for Barry Nicholas* (ed. P. Birks; Oxford, 1989), pp. 207-13.

2. D. Arnaud, *Recherches au pays d'Aštata* (Emar VI 3; Paris, 1986), no. 123.

3. In my interpretation, this clause means that Yadi-Bala will lose the right of redemption to the next relative in line (cf. Lev. 25.25, 26, 48, 49) if he cannot raise the money himself after two days' grace. The general principle that the closer relative has the right of first refusal lies behind Boaz' manoeuverings to persuade the 'redeemer' to cede his right in Ruth 4 (see Chapter 3).

price would then compensate for the loss of a family asset, not only to the owner, but also to his heirs.

The right of redemption was a measure of protection for the householder fallen on hard times. It held out the hope that family property lost to creditors might one day be restored. If, however, the original owner and his heirs were so destitute that they could not find the means to repay, then redemption would remain an empty right. Accordingly, it was the practice of ancient Near Eastern kings, in fulfilment of their divine mandate to ensure social justice, to decree on occasion a general cancellation of debts, which had the effect of releasing also debt-slaves and family land pledged for debt or under the guise thereof.[1] The same duty was incumbent upon the Israelite kings,[2] but by and large they failed to institute the necessary decrees, or at least to ensure their enforcement, which led to bitter criticism from prophets such as Jeremiah.[3] In consequence, the biblical codes of Leviticus and Deuteronomy sought to replace the untrustworthy royal prerogative with the reliability of an automatic system (see Chapter 2).[4]

1. New edition of the most prominent examples by F.R. Kraus, *Königliche Verfügunaen in altbabylonischer Zeit* (SDIOAP, 11; Leiden: Brill, 1984), replacing his earlier edition (*Ein Edikt des Königs Ammiṣaduqa von Babylon* [SDIOAP, 5]) cited in Chapter 2.

2. See now M. Weinfeld, *Justice and Righteousness in Israel and the Nations* (Jerusalem, 1985)—in Hebrew.

3. Jer. 34.8-22.

4. See also Westbrook, Review of Weinfeld, *Justice and Righteousness*, *RB* 93 (1986), pp. 604-605. The release described in Jer. 34.8-10 is the result of a royal decree, a special act resulting from the dire circumstances of the siege. I follow the school of thought that regards as a gloss the suggestion in vv. 13-14 that King Zedekiah's action was based on the Pentateuchal laws providing for the regular release of slaves: see N.P. Lemche, 'Manumission of Slaves', *VT* 26 (1976), pp. 38-59. *Contra* N. Sarna ('Zedekiah's Emancipation of Slaves and the Sabbatical Year', in *Orient and Occident. Essays Presented to Cyrus H. Gordon* [AOAT, 22; 1973], pp. 143-49), who explains contradictions between the Jeremiah account and the Pentateuchal laws as legal interpretation of the latter, on the model of later rabbinic exegesis. But the contradictions remain. The dilemma of the glossator is encapsulated in the discrepancy between 7 and 6 years in MT. The glossator wants to cite the slave law in Deut. 15.12, but it is unsuitable in one aspect: it refers to release six years from the date of each *individual* enslavement. The appropriate rule, of a *general* release, is found in Deut. 15.1, but that text refers to debts, not slaves.

4. *Inheritance*

When the head of household dies, the decision lies with his legitimate heirs—in principle his sons, but on occasion including or consisting entirely of his daughters (see Chapter 7)—whether to divide the estate among themselves or to maintain it for a period as common property, thus artificially perpetuating the existence of the 'father's house'. A continued state of indivision itself leads to special legal problems, which are discussed in Chapters 4 and 6, but not to conceptual ones. The 'father's house' survives as long as the family property remains intact; it is the decision to divide the property rather than the father's death which changes the structure of the family, breaking it up into a series of new, independent houses, each with its own head.

Division of the inheritance is carried out by lot,[1] a custom prevalent throughout the ancient Near East. In Old Babylonian documents recording the division of an inheritance between co-heirs, a typical concluding clause is: 'by mutual agreement they have cast the lot; they have divided the inheritance-share of their father's house'.[2] The Akkadian word for 'lot', *isqu*, was so closely associated with the process of inheritance that it could even be used as a synonym for the inheritance share itself. Thus a document from Susa (MDP 24.339) reads:

1-2	A house in good repair next to Ipiq-Adad and Pilakki is the inheritance-share (*isqāt*) of Igmilanni.
3-4	By the oath of Tan-Uli and Tempt-halki they have cast the lot (*isqa*); they are divided, clear.
5-10	(Witnesses).
11-13	And a door of Kubi-amat-pi is established as belonging to Igmilanni's inheritance share (*isqīšu*).

In the Bible, the word for lot (*gwrl*) is likewise used to describe the means of dividing the inheritance and the inheritance-share produced thereby. Num. 26.55 declares: 'But the land shall be divided by lot

Accordingly, an amalgam is made of the texts of the two laws.

1. See G. Dalman, *Arbeit und Sitte in Palastina*, II (Gütersloh, 1932), pp. 41-45.

2. TS 44:46-7: *i-na mi-it-gu-ur-ti-šu-nu is-qá-am i-du-ú-ma* ha-la é-ad-da-a-ni-ì-ba-a-ne. (*Archives familiales et propriété privée en Babylonie ancienne* [ed. D. Charpin; Paris, 1980], p. 231). The process is similarly depicted in the Middle Assyrian Laws, Tablet B 1.

(*gwrl*); they shall inherit by the names of their ancestral tribes', while in Num. 36.3 Zelophehad's brothers complain of their nieces:

> They will marry someone of the (other) tribes of Israel and their inheritance will be deducted from our ancestral inheritance and added to the inheritance of the tribe to which they shall belong, and be deducted from our inheritance-share (*gwrl nḥltnw*).

Another term used in the process of division is the line (*ḥbl*) used for measuring shares of land.[1] Sometimes it is used as a metonym for the whole process of acquisition by lot:

> My lines have fallen in pleasant places for me,
> The inheritance is pleasing to me (Ps. 16.6).

> He drove out the nations before them, and caused their inheritance to be cast by the line (Ps. 78.55).

At other times, like *gwrl*, it comes to designate the inheritance share itself:

> There fell ten shares to Manassah (*ḥbly mnšh*), apart from the land of Gilead and Bashan. . . (Josh. 17.5).[2]

The inheritance-shares resulting from the division are equal in size (if not quality), except in the case of the first-born, who is entitled to a double share (Deut. 21.17).[3] We have already noted the limitations on the father's ability to alienate the family land. In consequence, the father could not make a will in the modern sense whereby he bequeathed land to strangers. He could, however, allot shares in advance among his legitimate heirs, preferring one over the other and assigning specific property. Cuneiform documents of this character are well attested from the peripheral states such as Nuzi,[4] Emar[5] and Alalakh.[6] An example from Nuzi reads:[7]

1. Cf. Zech. 2.5.
2. Cf. Ps. 105.11, 'your inheritance-share' (*ḥbl nḥltkm*).
3. The same proportion is standard in the cuneiform documents, except in southern Mesopotamia where the first-born received 10 per cent of the whole estate as his extra share (R.T. O'Callaghan, 'A New Inheritance Document from Nippur', *JCS* 8 [1954], pp. 139-40).
4. See below.
5. Arnaud, *Recherches*, nos. 15, 34, 91, 176, 181, 182.
6. D. Wiseman, *The Alalakh Tablets* (London, 1953), no. 6.
7. AASOR X No. 21, in part. Clauses concerning a third son who had been

1-4 Tablet of allocation of Zigi son of Akkuya: he has fixed the allocations of his sons Ellu and Arzizza. Thus Zigi declares:
5-9 As regards all my fields, Ellu is my eldest son and he shall take a double inheritance-share; Arzizza is the younger son and he shall take according to his share.
10-12 Thus Zigi declares: I have given my houses and fields in Nuzi to my eldest son, Ellu.
13-19 I have given my stable which is among the large buildings, together with its vehicles, to Arzizza and Arzizza may open its entrance to the street. I have given my storehouses [?] in upper Nuzi beside the storehouses [?] of A. to Arzizza.
20-30 . . . .
31-36 Ellu and Arzizza shall divide my storehouses [?] in upper Nuzi beside the storehouses [?] of B: Ellu shall take a double portion and Arzizza shall take according to his share.
37-38 Of the slave-girls, each one shall take according to his share. . .

It is impossible to tell from documents of this type if any measure of favouritism was involved, but CH 165 recognizes that a father could make a special bequest to his favourite son, and so reduce the share of the other heirs:

> If a man bequeathes a field, orchard or house by a written instrument to his favourite son,[1] after the father's death when the brothers divide, he shall take the gift that his father bestowed upon him and in addition they shall divide equally[2] the property of the father's estate.[3]

In the Bible, the question of favouritism is addressed in the context of transfer of the preferential share from the first-born to a younger son. According to Deut. 21.15-17:

> If a man has two wives, one beloved and one hated, and the beloved and the hated have borne him sons, the first-born son being that of the hated

adopted by his uncle and is therefore excluded from this inheritance have been omitted.

1. Lit., 'gives to his favourite heir'. The term heir (*aplu*) implies a son unless otherwise stated, and from the context it is clear that here a son is meant.

2. The fact that the subsequent division is into equal shares (*mithariš*) leads us to suspect that it is the preferential share of the first-born that is being transferred to another son. The procedure would not be appropriate for a double share, but it would be if the preferential share is understood to be 10 per cent of the whole estate taken prior to division, as was the practice in Southern Mesopotamia (O'Callaghan, 'Inheritance').

3. Lit., 'house'.

> one: on the day that he allocates the inheritance (*hnḥylw*) of his sons, he shall not be able to grant the preferential share to the son of the beloved one to the prejudice of the son of the hated one, but he shall recognize the first-born, son of the hated one, by giving him a double share[1] in all he has.

The law renders invalid the father's gift in these special circumstances, where his preference is based on his attitude to his wives, not to the children themselves. By the same token, the right to re-allocate the traditional shares among the heirs in other circumstances is acknowledged, and indeed accepted as normal practice.

If, on the other hand, the first-born in question has committed a grave fault which gives the father just cause for his action, then his status as first-born of a hated wife will be no bar to transfer of his preferential share to the son of a beloved wife. Such is the fate of Reuben, Jacob's first-born son by Leah, who slept with his father's concubine and consequently lost his preferential share to Joseph, son of the beloved Rachel (see Chapter 6).

Once the father's house is divided into separate households, their respective heads, being brothers, still belong to the same family, but in a more abstract sense, now called the *mšpḥh*. The *mšpḥh* is a group of persons linked by kinship, the connecting factor being a common, dead ancestor.[2] Membership still involves some legal consequences, four of which are mentioned in the Bible.

1. In 1 Sam. 20.29, Jonathan explains to Saul David's absence from the king's table:

   > David begged leave of me to go to Bethlehem. He said, 'Please let me go, for we have a sacrificial feast of the *mšpḥh* in our town and my brother has summoned me to it. . . '

   The sacrificial meal is one activity that the members of the *mšpḥh* still perform as a unit. The religious duty is sufficiently serious to justify truancy from the royal court.

1. Or two-thirds (of the estate)? See M. Noth, *Aufsätze zur biblischen Landes und Altertumskunde*, II (Neukirchen–Vluyn: Neukirchener Verlag, 1971), p. 255. *Contra*, E. Davies, 'The Meaning of *pî šᵉnayim* in Deuteronomy XXI 17', *VT* 36 (1986), pp. 341-47. In this law, it would in fact make no difference, since the protasis assumes only two sons, and a double share would, therefore, equal two-thirds of the estate.

2. De Geus, *Tribes*, pp. 137-44; Gottwald, *Tribes*, pp. 257-70.

2. In 2 Sam. 14.7 a woman whose one son has killed the other relates:

   > Now the whole *mšpḥh* has risen up against your servant, saying 'Hand over the one who struck his brother, that we may put him to death for the life of his brother whom he killed. . . '

   The penalty for homicide was vengeance by the 'redeemer of blood', a relative of the victim.[1] From this passage we learn that the avenger represented the *mšpḥh*, which body ultimately bears responsibility for enforcing the right of revenge, and may also have acted as a court in this case, where both the culprit and the victim were within its ranks.

3. The same person also has the right to redeem family land sold to outsiders or family members sold into slavery, as discussed in Chapter 2. Lev. 25.48 lists the order of rightholders in the latter case:

   > One of his brothers may redeem him, or his uncle or his uncle's son may redeem him, or anyone else of his blood relatives from his *mšpḥh* may redeem him. . .

   The *mšpḥh* marks the outer limit of the right to redeem.

4. The element that underpins all the other functions of membership in the *mšpḥh* is inheritance. Num. 27.8-11 gives the order of succession which follows the same course as for redemption: son, daughter, brother, uncle, nearest relative in the *mšpḥh*. The first two heirs, son and daughter, are from the house, but when the house is extinct, then the family property passes to the outer circle of the family, who by the same token have the right to redeem that property if sold outside the family, to redeem members sold and thus bring them back into the family, and to avenge members killed, and thus bring back ('redeem') their blood into the family. And again, the outer limit of the right of inheritance is the *mšpḥh*.

While in theory the *mšpḥh* replcaes the old *byt 'b* of the deceased ancestor, the case of Abraham and Lot illustrates an exceptional circumstance in which the two 'co-exist'. After the death of Terah,

1. Num. 35.10-28; Deut. 19.2-12.

two of his co-heirs, Abraham and Lot, left home. It is specifically stated (Gen. 12.5) that they took with them only moveables that they themselves had acquired. Terah's estate therefore remained undivided, presumably in the hands of Nahor, the third co-heir. The resulting paradox of the separation of the *byt 'b* from a physical and familial point of view is expressed by Abraham when he instructs his servant (Gen. 24.38) to go 'to the house of my father and to my *mšpḥh*.

Beyond the *mšpḥh* lies a still wider grouping, the tribe (*šbṭ* or *mṭh*). The narratives concerning Israel's pre-settlement history give the impression that the tribe is simply an extended version of the *mšpḥh*.[1] In dealing with the incident of the daughters of Zelophehad, Num. 36.8 lays down a rule which suggests that it was indeed the tribe which was the outer limit of inheritance rights:

> Every daughter among the Israelite tribes who acquires an inheritance shall marry someone from a *mšpḥh* of her father's tribe, in order that every Israelite may keep his ancestral inheritance. No inheritance shall pass from one tribe to another...

Nonetheless, it is doubtful whether the tribe had this function in historical Israel. Tribal allegiance was based on a fictional, not a real, ancestor, and the lines of kinship would therefore be too vague to found the rights and duties of inheritance or family law.[2] In our opinion, it is not by chance that the inheritance and redemption laws mentioned above reach only to the level of the *mšpḥh*. Even in the case of the daughters of Zelophehad, which purportedly takes the tribe as the context of inheritance, the rule laid down was followed in practice by the daughters marrying their cousins (Num. 36.11-12), that is, well within the confines of the *mšpḥh*.

On the other hand, the theoretical legal validity of the tribe in the context of inheritance can be accepted for the presettlement narratives precisely because the fiction of direct descent from the tribal ancestor is maintained in them, so that our practical objections do not apply. That very fiction provides us with important legal information, since political events are portrayed as the actions of the individual members of a single family, the sons of Jacob. The relations between them are in accordance with the rules of family law and have logical legal con-

1. E.g. Deut. 29.17; Josh. 7.14.

2. Cf. the remarks of de Geus (*Tribes*, pp.145-50) on the historical nature of the tribe.

sequences. Thus the political decline of the tribe of Reuben in its territory east of the Jordan is represented by the account that we have already mentioned of Reuben, the first-born son of Jacob, losing part of his inheritance by reason of an offence against morality.[1] Portrayal of tribal territory in terms of the inheritance of an individual is likewise the key to the allocation of the Promised Land in the book of Joshua. God had originally made a grant of land to his loyal servant Abraham (which in itself is exactly the paradigm of royal land-grants to loyal subjects),[2] and confirmed the grant to his son Isaac and then again to his son Jacob/Israel, none of whom actually took possession.[3] But the 'sons of Israel', that is to say his direct descendants, do take possession of their father's estate, and divide it between them like heirs, which is why the process of allocation of land is described in those terms in Josh. 13–19, with the casting of lots for each inheritance (*nḥlh*). For the purposes of allocation the head of each *mšpḥh* within the tribe is treated as an heir *per stirpes* of the eponymous tribal ancestor.[4] In order to impose a theoretical framework on the political reality of the conquest of Canaan, the narrator adopted the paradigm of property law, and for that purpose reduced a political unit, the nation, to the level of the unit that was more properly associated with property law—the family.[5]

1. For the political history of the tribe of Reuben and its decline, see F.M. Cross, 'Reuben, First-Born of Jacob', *ZAW* 100 (1988) Suppl., pp.46-65.

2. M. Weinfeld, 'The Covenant of Grant', *JAOS* 90 (1970), pp.184-200.

3. Gen. 12.7; 13.15, 17; 15.7, 18; 17.8; 24.7 (Abraham); 26.3, 4 (Isaac); 28.13; 35.12; 48.4 (Jacob). For each grantee, the grant is expressed in a full version, i.e., to the grantee and his descendants, but also in a partial version, i.e., either to the grantee alone or to his descendants alone. In 28.4 Isaac expresses the wish that God confirm to Jacob and his descendents the grant that he had made to Abraham. S. Loewenstamm ('The Divine Land Grants of the Patriarchs', in *Comparative Studies in Biblical and Ancient Oriental Literatures* [AOAT, 204; Kevelaer, 1980], pp.423-24) argues that the grant to the patriarch is not strictly appropriate, since no transfer took place. But transfer of ownership and of possession need not be synonymous.

4. E.g. Josh. 17.1-6. In Josh. 14.9-14 Caleb receives a special gift, like the son in CH 165.

5. A 'realistic' explanation of events may be provided in addition to the theoretical legal one. Thus in Josh. 17.14-18 Ephraim and Menassah claim an extra portion by reason of their numbers, but in theory they are entitled to the extra inheritance share because of Jacob's gift (cf. Gen. 48.5; 49.26), Joseph being his favourite son.

Chapter 1

Purchase of the Cave of Machpelah

The lengthy report in Genesis 23 of the negotiations and subsequent purchase of the cave and field of Machpelah is problematic from the legal point of view. On the face of it, Abraham obstinately insists on paying for what the Bnei Heth and Ephron wish to give him free. If one is not to dismiss the bulk of the report as niceties of oriental bargaining, as do most non-legal commentators,[1] then complex problems of relating the transaction to the provisions of a coherent legal system arise. For this reason it is impossible entirely to separate the question of the legal source of this passage from the problems of its content. Consequently the first section on material legal problems of the text includes a consideration of some of the possible *sources*, while those relating to aspects of form alone are treated separately.

1. *Legal Problems*

Assuming the legal background to be that of Jewish law, Melamed[2] interprets the transaction as a gift-transaction, not by the Bnei Heth, but also by Abraham. The problem is that Abraham being a 'stranger and sojourner', as he declares in v. 4, he is unable to buy land for

1. 'Cette scène est dans le genre des longues transactions orientales, où l'on offre pour rien avant d'éxiger une somme exorbitante' (R. de Vaux, *DBSup*, V, p. 619, col. 1). On the generally accepted assumption that 400 shekels was an exorbitant price we may only comment that any conclusion about the price is altogether impossible. Without knowledge of the contemporary value of money or the size of the land we lack the barest criteria for assessment. Furthermore, the 'bargaining' does not appear to be over the price, as one would expect.

2. E. Melamed, 'Purchase of the Cave of Machpelah', *Tarbiz* 14 (1942), pp. 11-18.

burial.[1] In order to avoid this prohibition, the transaction takes the form of mutual gifts. But if all that is needed is a gift in order to make his acquisition possible, it seems strange that Abraham refuses Ephron's offer in v. 11[2] and insists on giving money in return,[3] which looks suspiciously like an offer to purchase. Melamed proposes, therefore,[4] that Abraham did not in fact want to receive a real gift, because he feared that the giver meant a *matana ʿal menat lĕhaḥzir* (gift made on condition that it be returned—cf. *Sukk.* 41b); he thus in v. 13 requests Ephron to take his money first, and only afterwards will he bury his dead. However, the talmudic *matana ʿal menat lĕhaḥzir* is a subtle concept, the product of a well-developed legal system, and it is difficult to relate it to the presumably quite primitive legal system of the patriarchs. Nor is it an entirely satisfactory explanation: it is not clear why reversing the order of the gifts should make any difference to the nature of the transaction. In fact, there are more serious objections on linguistic grounds to interpreting the whole transaction as one of mutual gifts. The verb *ntn*, used by both parties, alone has a fairly neutral sense of 'to transfer', and can certainly mean 'to give' as a gift. But the formula 'to give for money' exists as a standard expression for 'to sell' in Akkadian *(ana kaspim nadānum)* and almost certainly also in Hebrew,[5] and *a fortiori* Abraham's statement *bksp ml' ytnnh ly* in v. 9 can refer to nothing else. It recalls the formula *ana šīmim gamrim* in contracts of sale in Akkadian and *bedamin gemarin* in the contracts of Bar Kokhba. Furthermore, it is specifically stated in v. 18 that the land passed to Abraham as a *mqnh*.[6]

Another approach is to see the transaction not as one of gift at all, but turning on some technicality of the law of sale. M. Lehmann,[7]

1. Citing Isa. 22.16 for this proposition.

2. 'No, my lord, hear me: I give you the field, and I give you the cave that is in it; in the presence of the sons of my people I give it to you; bury your dead' (RSV).

3. 'But if you will, hear me: I will give the price of the field; accept it from me, that I may bury my dead there' (v. 13., RSV).

4. 'Purchase', p. 7.

5. Gen. 47.16-17; cf. the expression 'to acquire money' for 'to buy', which is well attested: Gen. 17.12ff.; Exod. 12.44; Isa. 43.24.

6. S. Loewenstamm, in *Encyclopedia Biblica* (in Hebrew), V, col. 617. For examples of former: *Mémoires de la Délégation en Perse*, Vol. XXIII, 283.7; and of the latter: *Biblica* 38 (1957), p. 245, II.3, III.6.

7. 'Machpelah and Hittite Law', *BASOR* 129 (1953), pp. 15-18.

assuming the Bnei Heth to be identifiable with the Hittites, adduces two provisions of the Hittite Laws (HL)[1] which account for the course of the negotiations between Abraham and Ephron.

According to secs. 46 and 47 of the Hittite Laws, purchase of part of a feudal tenant's landed property did not subject the buyer to any obligations of feudal service to the king, but purchase of the whole did. Thus Abraham, mindful of the heavy consequences of acquiring an *entire* field, requested only that part of Ephron's property for which he had actual use: 'his cave of Machpelah which is *at the edge of his field*' (v. 9). Ephron, on the other hand, saw a chance of ridding himself entirely of feudal service and therefore promptly replied (v. 11): '*I sell you* the field and I *sell* you the cave which is in it'. He refused to divide his property, and gave Abraham the alternative of purchasing the entire field or no part of it at all, so that Abraham would become feudatory for the entire field with a complete purchase. The Hebrew verb which Lehmann translates 'to sell' is the same verb *ntn* which Melamed interprets as 'to give as a gift'. As we have stated, this verb is quite neutral in meaning, merely having the sense of 'to transfer', and could therefore support Lehmann's translation, but this theory is open to objection upon historical grounds. There appears to be no basis for the assumption that the lands of Hebron were at any time in the hands of the Hittite kings.[2] Nor does the text itself in any way assist: nowhere in it is there any suggestion that Abraham was liable for any feudal services to the Hittite king, who is not mentioned, or even to the Bnei Heth, who are. It may well be that the Bnei Heth are to be identified with the historical Hittites, but in this case it is unlikely that a specific provision of a Hittite king would form the legal background to a transaction involving them; if Hittite law were to play any role here, it would have to be some aspect of the customary law of the people and not royal regulations.

If, however, our conclusion from the foregoing discussion is, therefore, that Abraham indeed wishes to buy, and the Bnei Heth and Ephron appear to wish to give, the land, then we are returned to the original question: why does Abraham take so much trouble to pay for what the Bnei Heth, and Ephron in particular, seem so eager to give

1. Ed. J. Friedrich, *Die Hethitischen Gesetze* (Leiden: Brill, 1971).

2. Loewenstamm, *Encyclopedia Biblica, loc. cit.*; see also E. Speiser, *Genesis* (AB), p. 172.

him free? A further theory emphasizes the rights which Abraham hopes to gain thereby, deriving from what German legal historians call the *Prinzip der notwendigen Entgeltlichkeit* (principle of the need for consideration).[1]

An object transferred by one person to another remains the former's property so long as he has not received the price, counter-value or the like, no matter into whose hands it may pass. Thus, in a loan, the lender remains the owner of the coins advanced (or rather, since they are fungible things, their value) until reimbursement, and if the borrower uses them to buy anything, it is the lender who becomes the owner of it until the money lent is repaid. Likewise, in a sale, the vendor remains owner until receipt of an adequate price. Therefore there is only cash sale, and mention of payment of the price constitutes the true title to the property.[2] What Abraham wants is a firm and definitive right to ground where he is going to establish a family tomb. His aim is to acquire an inheritable estate (*propriété*) in which he and his descendants may also be buried. This acquisition as an estate can only be made against money. It is clear that the weighing of the money in v. 16 is a real and not a fictitious payment, or *mancipatio*. It is also followed immediately by a statement of passing of the property.[3]

It is noteworthy that many other passages in the Bible concerning purchase of property take care to mention that it was for a money price, even giving the exact price, although it is of no apparent significance for understanding the story. Of particular significance are two passages recounting the purchase of land from a pagan for the purpose

1. J. Lewy, 'Les ventes dans le Bible, le transfert de propriété et le Prinzip der notwendigen Entgeltlichkeit', in *Mélanges Philippe Meylan*, II (Lausanne, 1963), pp. 157-67. For a general history of this theory and its application to other ancient legal systems, see E. Seidel, *Aegyptische Rechtsgeschichte der Saiten-und Perserzeit* (Glückstadt, 1968, 2nd edn), pp. 45-46.

2. This reluctance to accord full ownership to the buyer until the price is paid is evident in modern systems as well; e.g. Art. 2103 of the *Code Civil*, which accords the vendor a 'privilège', a right *in rem* over immoveable property for payment of the price. The unpaid vendor's lien in English law may be regarded in the same light.

3. 'And Abraham weighed out for Ephron the silver which he had named in the hearing of the Hittites, four hundred shekels of silver, according to the weights current among the merchants [v. 17]. So the field of Ephron. . . was made over to Abraham as a possession. . . ' (RSV).

of erecting a holy structure. In Gen. 33.19, Jacob buys land for a hundred *qśyṭh*. He intends to build an altar, and this purpose demands an estate separate from the property of pagans. Moreover, the land is to serve later as the grave for the bones of Joseph, and on that occasion, as indeed for the various times when Machpelah is used for the burial of the patriarchs, the text recalls the origin of the property and the price of the purchase.[1] Likewise, King David (2 Sam. 24.24 and 1 Chron. 21.22-25) insists on acquiring the threshing-floor of Arauna only for a money price. According to the Chronicler he says (v. 24): 'I will not bear to the Almighty what is yours'. This appears to be a recognition of the principle that we have been discussing, that the property cannot pass if the price is not paid. There is a possible qualification. The verb *ntn*, as we have stated, does not necessarily signify an absolutely free gift. The distinction may have been not between a price and nothing, as in the English doctrine of consideration, but between the basic requirement of immediate and complete payment of the full price and a nominal price or goods, which would be regarded as a counter-gift, perhaps of evidentiary or honorary value only, like the feasts given upon the sealing of convenants.[2] The phrase *bksp ml'*, which appears also in the Chronicler's account of the purchase of the threshing-floor of Arauna, may be an indication of this.[3] Of course, this phrase may only be an instrument of emphasis, to be made where the question of the definitive passing of the property is at issue, since as we have stated, the phrase 'to give for money' exists also for 'to sell'.

The logical consequence of this theory is that the Bnei Heth and Ephron offer the property free just in order to prevent Abraham from acquiring ownership of the land. This proposition is not too startling: Abraham is a 'stranger and sojourner', and many societies show reluctance to allow a foreigner to acquire land, short of actually

1. Josh. 24.32: 'The bones of Joseph, which the people of Israel brought up from Egypt were buried at Shechem, in the portion of ground which Jacob bought of the sons of Hamor the father of Shechem for a hundred pieces of money: it became an inheritance of the descendants of Joseph' (RSV).

2. Cf. Seidel, *Rechtsgeschichte*: '...das Recht will im 'Eigentum' vor allem den Kapitalwert für den Eigentümer shützen...Gibt er also eine Sache aus der Hand, so bleibt sie sein Eigentum bis er ein richtiges Entgelt dafür in sein Vermögen bekommen hat.'

3. Verse 22. Note also *ana šīmim gamrim* and *bedamin gemarin* mentioned above.

forbidding it outright.[1] R. de Vaux is correct in stating that 'les offres généreuses des habitants, puis d'Ephron, cachent leur répugnance à voir cet étranger devenir propriétaire chez eux'.[2] We suggest that this fact in itself will lead us to an explanation of the conduct of the parties in the negotiations, without reference to the specific provisions of other legal systems.

Firstly, it is to be noted that while Abraham specifically requests an *'ḥzt qbr*, both the Bnei Heth and Ephron carefully avoid using the term. The meaning and use of the term *'ḥzh* requires a detailed study in itself, but it may be generally stated that it denotes an inheritable estate, associated with family or tribe rather than the individual.[3] Whether or not it is an actual feudal holding, it certainly relates to a social rather than economic position. The fact that the grave was acquired as an *'ḥzt qbr* is emphasized in later references to the purchase.[4] The Bnei Heth insist that Abraham is welcome to bury his dead in any of their graves (v. 6): it appears that Abraham is too powerful for them to refuse him, but they attempt to persuade him that it is unnecessary for him to obtain a full estate merely in order to bury his dead. Abraham, however, jumps upon their guarded offer (v. 8) and makes it clear that if they are so willing to let him bury his dead with them, then it is an *'ḥzt qbr* that he wants (v. 9). It is also clear from his words in v. 9 that his acquisition of an *'ḥzt qbr* is dependent on his paying the full price—a reflection of the principle of necessary consideration discussed above.[5] Turning now to Ephron, we can see that his offer of the field as well as the cave in v. 11, which Lehmann explained by reference to the intricacies of Hittite law, is no more than a continuation of the same policy. He offers Abraham the

1. An edict of Hattusili II forbidding merchants to acquire land at Ugarit (P.R.U. IV, pp. 103-105) has been linked with the case of Abraham as a foreign merchant (C.H. Gordon, 'Abraham and the Merchants of Ura', *JNES* 17 (1958), p. 28). Compare also the provision of the XII Tables ADVERSUS. HOSTEM. AETERNA. AUCTORITAS. preventing a foreigner from obtaining by prescription the right of possession to the property of a Roman.

2. *DBSup*, V, p. 619, col. 1.

3. E.g. Num. 27.4; Ezra 45.5; Lev. 25.41; Josh. 21.12; 2 Chron. 31.1.

4. Gen. 49.30; 50.13.

5. Verse 9: 'that he may give me the cave of Machpelah, which he owns: it is at the end of his field. For the full price let him give it to me in your presence as a possession for a burying place' (RSV).

field as well as the cave, if not free, then at any rate not at the full price, and concludes 'bury your dead', in order to dissuade (or rather, bribe) Abraham from purchasing a full hereditary estate in the cave at full price.[1]

But Abraham, in a magnificent *coup de théâtre,* caps Ephron's offer by offering the full price for both the field and the cave (v. 13). It is curious that prior to making this counter-offer, Abraham bows to the *'m h'rṣ* (v. 12; cf. v. 7) while it is Ephron who has been talking to him. Before making his counter-offer to Ephron, Abraham requires re-affirmation from the *'m h'rṣ* of the basis on which he is to negotiate with an individual, viz. the acquisition of an estate. Thus while I do not agree with Lehmann or Melamed that the negotiations turn on a specific legal provision, I consider that they do have a definite legal background in the context of Abraham's status vis-à-vis the Bnei Heth and the legal rights that he wishes to obtain from them.

2. *Legal Sources*

A Hittite legal background to the passage has been suggested on grounds of form also.[2] It was a characteristic trait in Hittite business documents that the exact number of trees be listed at each real estate sale, and indeed in v. 17 of the biblical account, describing the property sold, prominent mention is made of the trees on it: 'and all the trees which were on the field along its entire borderline'. There is, however, a material difference between the two types of listing. To mention the *exact number* of trees is a peculiarity; to mention that all the trees on the estate pass to the purchaser is a perfectly natural and common-sense term dealing with disposition of property attached to the realty, and as such appears, *inter alia,* in real estate transactions from Mesopotamia, Ugarit and in the contracts of Bar Kokhba.

A more direct parallel from the formal point of view has been suggested by several scholars in the 'dialogue documents' of the neo-Babylonian period.[3] This contract, as its name implies, described an

1. Cf. B. Perrin, 'Trois textes bibliques sur les techniques d'acquisition immobilière', *RHDFE* 41 (1963), pp. 6-19.

2. Lehmann, 'Machpelah', p. 17.

3. J.J. Rabinowitz, 'Neo-Babylonian Legal Documents and Jewish Law', *JJP* 13 (1961), p. 131; H. Petschow, 'Die Neubabylonische Zwiegesprächsurkunde und Gen. 23', *JCS* 19 (1965), pp. 103-20 (refuting Rabinowitz's theory of reception

interchange between buyer and seller. Its typical schema was thus:[1]

1. Title: 'Tablet of. . . '
2. Dialogue:
    a. 'A (seller) went before B (buyer) and spoke as follows: "Let me give you my house and you give me the money . . . " '
    b. 'B agreed with him (*iš-me-šu-ma*) . . . '
3. Payment formula: 'He weighed out and gave him X *mina* Y shekels of silver'.
4. Transfer or purchase clause, including property description: 'He (seller) assigned Z (the property). . . ' or 'He (buyer) has acquired Z. . . '
5. Quitclaim clauses and/or provisions against suit.
6. Seals and witnesses.
7. Date.

It is not to be expected that the narrative form of Genesis 23, with the additional complexities of the situation, will conform to the tight juristic dialogue document; at most one might expect some similarity in structure and perhaps in certain terms and phrases. (Thus the absence of date, seal or scribe and only the vague mention of all those who came in at the gate of the city as witnesses.) Moreover, no example of a sale document in dialogue form has come down to us that is substantively like that described in Genesis 23. In the former it is mostly a needy seller who is the offeror; in Genesis 23 on the other hand Abraham as a buyer requests the transfer of the land to him by purchase. From the rare instances of buyer as offeror, which likewise show him as the needy party, we learn that the norm with the dialogue documents was that the person taking the initiative is of a lower social standing than the person accepting.[2]

Nevertheless, if one takes Ephron's statement of the price in v. 15 as an 'offer', then the abrupt change from direct speech in Abraham's 'acceptance' in v. 16, followed by a payment formula and clause stating transfer of the property (vv. 17-18), results in a remarkable

from Jewish Law); G. Tucker, 'The Legal Background of Gen. 23', *JBL* 85 (1966), pp. 77-84.

1. Tucker, 'Legal Background', p. 79.
2. Petschow, 'Zwiegesprächsurkunde', p. 117.

affinity with the structure of a 'dialogue document'.[1] The whole account of the purchase in Genesis 23, in spite of its detail, contains no mention of a written document (cf. Jer. 23.8-15), but describes the legally material steps as the dialogue document does. Moreover, in both cases the operative expression or main clause is a payment formula, in contrast, for example, to the standard Old Babylonian, Old Assyrian, and many neo-Babylonian contracts for moveables which used sale formulae. In all these texts payment clauses frequently occur, but they are not generally the main clause except in the dialogue documents. From the point of view of the language used, it is significant that in both cases acceptance is stated with the same verb: *šmʿ* (Akkad. *šemû)* in the sense of 'to agree'.

All the documents of sale discussed by commentators as possible sources of the transaction in Genesis 23 are bi-partite agreements between private landowner and purchaser, which is of course the normal form of a contract of sale. By the same token, the role of Bnei Heth is relegated to the sphere of public international law: their role is to give permission to Abraham to buy land from an individual citizen, and to witness the closing of the bargain. However, in several places where reference is made to the purchase of Machpelah, it is the Bnei Heth who appear to be the vendors.[2] It might be argued that in Gen. 23.17ff. Abraham in fact acquires land as a *mqnh* from Ephron and as an *'ḥzt qbr* from the Bnei Heth, the two being different types of estate or possession. Thus a *mqnh* would be acquired by the transfer of money, while an *aḥzh* by the performance of the very act for which it was purchased—in this case a burial. But references outside ch. 23 to the purchase do not seem to follow this schema.

These references may of course indicate no more than generality of expression, but their existence tends to suggest that the Bnei Heth as well as Ephron had a juridical role in private law as regards the con-

1. Verse 15: 'My lord, listen to me; a piece of land worth four hundred shekels of silver, what is that between you and me? Bury your dead' [v. 16]. Abraham agreed with Ephron; and Abraham weighed out the silver which he had named. . . [v. 17]. So the field of Ephron. . . was made over [v. 18] to Abraham. . . See Tucker, 'Legal Background', pp. 80-81. Petschow attempts to insert the whole of the negotiations into the 'dialogue document' pattern, but there is bound to be an overall similarity since the dialogue document purports to summarize actual negotiations and agreement.

2. Gen. 23.20; 25.9-10; 49.32.

tract of sale of land, in particular Gen. 25.9-10: 'in the *field of Ephron* the son of Zohar the Hittite, which is before Mamre; the field which Abraham purchased of the *children of Heth*...' Among the contracts of transfer of land between private individuals in Akkadian found in the archives of the Royal Palace of Ugarit at Ras Shamra, a number take the curious form of a tripartite transaction whereby the king intervenes not merely as a witness but as an intermediary through whose hands the property passes from one party to the other.[1] At first sight, the wording of these transactions seems illogical. After having recorded a real property transaction between two private parties, it is stated that the king has made a gift to the alienee of the property of which he has already become owner by virtue of the contract recorded in the first part of the document. The intervention of the king cannot, therefore, correspond to a gift properly speaking since he disposes of property which does not belong to him in favour of a person who already owns it. Boyer[2] therefore concludes that there can be here only a fictitious gift designed to obtain for the alienee firmer and more extensive rights than those which he holds by virtue of the first legal act, by conferring on this acquisition the privileged legal status recognized in a royal gift. This protection probably concerned subsequent impeachment of title by a third party, or it may have been designed to overcome a flaw in the vendor's title, but in either case the impression given to outsiders as a result would be of a title firmer than usual. A particularly interesting example is 15.119:

> From this day
> before Niqmepa, son of Niqmadu,
> King of Ugarit
> Yaḫešar, son of Maššu,
> has acquired (*iltaqī*) a house, of Ḫagbanu, son of Ilišala
> for 110 + X (shekels) of silver.
> The house is bound
> in the sun of the day
> to Yaḫešar and his sons
> for ever.
> In the first place, Ḫagbanu
> has given it (*iddinšu*), and in the second place

1. *Palais Royal d'Ugarit*, III.

2. G. Boyer, 'L'intervention de l'autorité publique dans les actes de droit privé', in *Palais Royal d'Ugarit*, III, pp. 283-93 [285].

Niqmepa, son of Niqmadu,
king of Ugarit, has given it (*iddinšu*)
to Yaḫešar
and to his sons
for ever.

The same repetition of the transfer clause appears in Gen. 23.17: 'So the *field of Ephron* in Machpelah, which was to the east of Mamre, the field with the cave which was in it was made over to Abraham as a possession *in the presence of the Hittites,* before all who went in at the gate of his city'; and v.20: 'The field and the cave that is in it were made over to Abraham as a possession for a burying place by *the Hittites*' (RSV).

According to Boyer[1] a similar legal fiction is found also in Hittite documents (in Akkadian) from Boghaz Koi and on *kudurru* stones from Mesopotamia at a contemporary period with the documents from Ugarit, and in Elamite documents of c.1600 BCE. It would be rash, therefore, to draw any conclusions about the *exact* source of the law of Genesis 23. But we suggest that the widespread existence in the latter half of the second millenium BCE of a legal fiction of double transfer, by sovereign as well as by property-owner, in cases where the long-term rights of the alienee to the land were to be particularly emphasized, might well give rise to the popular notion of the alienee acquiring the land both from sovereign and owner, either of which could be indifferently mentioned as alienator.

3. *Conclusion*

Acceptance of the neo-Babylonian 'dialogue documents' as the legal source of the contract in Genesis 23 leads to the view, already held by many commentators, that the authorship of this passage dates from the period of the exile (which coincides with the neo-Babylonian period)

1. 'L'intervention', p. 291. 'Nous nous trouvons ainsi en présence d'institutions identiques ou analogues largement diffusées dans le Proche Orient pendant la seconde moitié du IIe millénaire.' Cf. a *kudurru* stone from the reign of Marduk-nadin-aḫḫe, which tells us that the land was bought by one Marduk-naṣir from Amel-Enlil, the son of Hanbi. But later the prospective claimants who are cursed include one who says 'The lands were not the gift of the king' (L. King, *Babylonian Boundary Stones in the British Museum* [1912], No. VII, col. II, 1,7).

or later, and is therefore in the Priestly tradition.[1] In our opinion the 'double transfer' fiction discussed above points to an authorship of considerably greater antiquity.[2] This is not to deny the possibility of a 'dialogue document' form in the description of the sealing of the contract, but if such a form exists therein, I consider it to be the result only of editing of an essentially ancient source.

1. Cf. Tucker, 'Legal Background', p. 84.

2. Note also the expression *'br lsḥr* which has a direct parallel in the Old Babylonian technical term *maḫīrat illaku*—'the 'current rate', e.g., Codex Eshnunna, sec. 41.

Chapter 2

JUBILEE LAWS

1. *Introduction*

The Torah contains two groupings of cyclical legislation, the Jubilee laws, based on a fifty-year cycle, and the Sabbatical laws, based on a seven-year cycle. Our enquiry is concerned with the former, the Jubilee legislation, but it is clear that an important part of the discussion will be the relationship between it and the Sabbatical legislation. The laws of these two groupings, which overlap considerably, consist of three main elements, fallow laws, release laws, and redemption laws. The latter are not cyclical laws, but are linked to the cyclical legislation in the text and are important for its understanding.

The Law of the Codes

The material outlined above is found in three Pentateuchal codes; in Exodus, Leviticus and Deuteronomy. In Exod. 23.10ff. there is a fallow law: an entire cessation of all fieldwork (verb *šmṭ*) is ordered to take place in every seventh year. This is said to be dictated by a regard for the poor and the beasts of the field. From the context it would appear that the fallow is intended to be universal (the following regulation concerns the Sabbath), but this is by no means a necessary conclusion. Secondly, there are release laws, concerning slaves only. In 21.2-6 it is laid down that a Hebrew slave can be kept in bondage only for six years. After this period he was automatically emancipated. Provision, however, is made for a slave wishing to remain in permanent servitude: a public ceremony took place which signified his acceptance of his position in perpetuity. Nothing is here said which leads us to suppose that there was one simultaneous period of emancipation all over the country. This code contains no redemption laws, but they are implied for slaves in the

stipulation 'he shall go out free for nothing'.

In Deuteronomy 15 there are release laws for debts and slaves. In 15.1-3 the seventh year is assigned as the period at which all liabilities of a fellow Jew were cancelled (or suspended?)—the verb used is again *šmṭ*. This provision was to be of universal operation (15.9; 31.10). Deut. 15.12-18 repeats the rules of Exodus 21 with regard to emancipation of slaves; here again no simultaneity of release can be inferred. There are no fallow laws or redemption laws.

In ch. 25 of Leviticus provision is made for a seventh-year fallow. There is no mention of the poor, however; the reason assigned is that the land, being God's land, must keep the Sabbath, that is, the Sabbath principle is extended to cover nature as well as man. There are redemption laws for both land and slaves. Release laws, for land as well as slaves, now appear within the context of the fifty-year Jubilee, whose contents we shall consider in detail later. In the meanwhile, only the basic outline of this institution is necessary for our discussion, and that is as follows: every fiftieth year is a fallow year and a year of release (*drwr*) in which all Hebrew slaves are emancipated and all agricultural land returns to its original owner. The consequence is that no agricultural land may be sold for more than a fifty-year leasehold: the law expressly considers several of the consequences thereof.

Material in the Narratives

The earlier historical books are silent about the fallow year, but the Chronicler regards the seventy years' captivity and desolation of the land as making up for unobserved Sabbaths of the land, 'to fulfil the word of the Lord by the mouth of Jeremiah' (2 Chron. 36.21). There is also a reference in Neh. 10.32 which probably refers to a fallow: 'and we will forego the crops of the seventh year and the exaction of every debt'. This is also the only reference to remission of debts.

Emancipation of slaves is mentioned in Jer. 34.8-9. There, the population of besieged Jerusalem had agreed to manumit Hebrew slaves, but subsequently enslaved them again. This behaviour led Jeremiah to foretell God's revenge to the king and people: 'Ye have not hearkened unto me, to proclaim liberty (*drwr*), every man to his brother and every man to his neighbour: behold I proclaim unto you a liberty (*drwr*) to the sword, to the pestilence, and to the famine' (v. 17). The prophet quotes a law of manumission (v. 14): 'at the end of seven years ye shall let go every man his brother that is an Hebrew

which hath been sold unto thee: and when he hath served thee six years thou shalt let him go free from thee'.

There are two possible references to the Jubilee outside Leviticus: in Isa. 61.1-3 the prophet envisages a proclamation of liberty (*drwr*) to the captives, and of a 'year of favour' of the Lord (*šnt rṣwn*). This reference is altogether too obscure to provide any positive link with the Jubilee legislation. In Num. 36.4 it is stated that if the daughters of Zelophehad marry outside their tribe, the land will pass to their new tribe at the Jubilee (*hybl*). This may be a mistaken gloss: the Jubilee is concerned with land that had been sold, not with inherited land.

Also of interest is one of Ezekiel's ordinances concerning the Prince in his ideal Constitution.

> If the prince give of his property unto any of his sons, it shall belong to his sons; it shall be their possession as landed property. But if he give a gift of his inheritance to one of his slaves (i.e., subjects), then it shall be his to the year of liberty (*šnt hdrwr*); after it shall return to the prince; only his sons shall keep their landed property (46.16-17).

2. *The Practicality of the Jubilee*

Modern commentators, beginning with J. Wellhausen, have dismissed the Jubilee provisions as the work of an idealistic theoretician, who must have lived during or after the exile. Pedersen compares it with the law of redemption with which it is combined:

> The object of the law of the Yobhel year is, by might and main, to preserve the property for the person into whose hands it has come, whether he is worthy or not. It is the expediency of despair, of the same kind as the demands of Deuteronomy for the remission of debts, but still more radical in its conservative tendency. The law of redemption only aims at maintaining the unity of the family; if the family is not strong enough to maintain the property, then it must go down. The Priestly Code doctrinally wants to check the development of life, in order that the inefficient may have the same property, as if they had been efficient: the family must be maintained at its former level.[1]

Several attempts have been made by more recent scholars, however, to demonstrate both the antiquity and the practicability of the institu-

1. *Ancient Israel* (London, 1926), I, pp. 88ff. Objections have also been made to the other regulations; cf. F. Lemoine, 'Le jubilé dans le Bible', *Vspir* 81(1949), pp. 262, 272ff.

tion of the Jubilee. These attempts fall into two categories: those which seek to find working parallels in ancient Near Eastern sources, and those which seek to 'make it work', by reconstructing a suitable social and economic background.

The Laws as a Working Model

J. van den Ploeg considers the laws to have a real and practical character on the basis of their stemming from a period when the economic structure was still primitive and undeveloped.[1] Thus the law of remission of debts, along with the ban on interest (Lev. 25.37), date from a time when the system of commercial loans had not yet arisen and *all* loans were virtually charitable ones.[2]

> There is then no question of large sums or of things of great value, but of objects or of money of which the rich Israelite had no need, but which at a certain moment were necessary to the poor. The law-giver also knew that it is often difficult or even impossible for a poor man to restore what he has been loaned; he sought to ease this situation by ordaining that every seventh year Israelite creditors should remit in favour of their supposedly poor debtors debts they have contracted.

This situation, therefore, provides the setting for the Jubilee law, which 'must be an ancient law meant to be kept in a society of still simple social and economic structure'.[3] We find the concept of primitive economy given here difficult to comprehend. Its primitiveness must certainly be extreme, almost pre-agricultural. Moreover, it is difficult to see why stern moral injunctions against interest are required in a society so primitive that only 'charitable' loans exist; such rules presuppose rather the widespread use of loans at interest.[4]

Van den Ploeg's argument raises an important point of methodology. Failure to demonstrate the practical application of the Jubilee and related institutions during the main biblical period leads to the conclu-

1. 'Studies in Hebrew Law', *CBQ* 13 (1951), p. 169.

2. Proposed originally by G. Driver, *Deuteronomy* (ICC; Edinburgh: T. & T. Clark, 1896), pp. 178-80.

3. *Deuteronomy*, p. 170.

4. There is the further point that it is hard to imagine a 'law-giver' in such a primitive society: one would expect the development of the law at this stage to be organic and not by legislative innovation.

sion that it is a later development or an earlier survival. If it is later then it is an academic invention, not developed organically from early time but only by the legislators of the exilic or postexilic period. This is a period for which we possess a relatively large amount of evidence, so that if it existed in practice it would almost certainly be attested. For those who wish to establish its practicability there is, therefore, the temptation, the validity of which we may question, to choose the other end of the spectrum and assign it to a period when, so far from there being contrary evidence, there is no concrete evidence whatsoever.

C.R. North likewise assigns the Jubilee to an 'agrarian economy of primitive simplicity'.[1] He links the whole apparatus of release in the Codes to the practice of enslavement and property-confiscation arising from insolvency, and thus interprets the *šĕmiṭṭa* debt-release as a release of the person of the debtor along with possibly his family and land. The Jubilee was no more than the seventh *šĕmiṭṭa* in a 'heightened' form. In order to establish its practicality, however, he is forced to abandon its apparently universal character:

> the underlying economic practice of the Pentateuch convinces us that *šemiṭṭa*, identical with the sabbath year and seventh-year slave release, was not simultaneously universal throughout the land but occurred in the seventh year of *each* case of bankruptcy-enslavement. Jubilee was the seventh *šemiṭṭa*. Its 'heightening' consists in this: The serf who had lost the title to his onetime property is in the seventh year permitted to administer it as his own. If he makes a success of the venture, he will realize a little capital with which to buy off at least a small segment of the property which he is farming: Lev. 25.26. Experience had taught that in most cases the seventh year experiment would *not* enable the dependent to make a success of economic life entirely on his own. And it was not practical to make great demands on the self-sacrificing generosity of owners, especially when the beneficiary had not given reasonable hopes of succeeding. At the same time, the soundness of the national economy demanded that such dependency should not be prolonged indefinitely. For this reason stress is now laid on the fifty-year term. The prospect of rehabilitation after so long a time, a full life-span, is largely illusory for the 'guilty' debtor himself, but it safeguards the self-respect of his family, and guarantees his sons an independent chance to prove their capability.[2]

1. *The Sociology of the Biblical Jubilee* (Rome, 1954).
2. *Sociology*, p. 188. It is hard to see how the fallow became associated with these laws if the seventh and fiftieth were to be working years.

North dates the Jubilee legislation from the time of the Occupation, the fifty-year term being a one-time measure to give each newly settled Israelite a fresh start if he had fallen into slavery through lack of success in farming at the beginning. The fifty-year term was then repeated due to legal inertia, although it gradually became more and more academic as economic realities altered. Problems of its application, such as to walled cities, were academically solved by later jurists.

The basic difficulty presented by this theory is that, for all its ingenuity, there is no evidence in the texts for its historical aspect, and indeed its material aspect appears to be contradicted by them. The Jubilee year in Leviticus 25 is quite clearly universal and simultaneous. The sounding of the trumpet in Lev. 25.9 is explained by North as a *šûdûtu*, a public proclamation required in ancient law codes as a sort of registration formality prerequisite to the exchange of property administration, the point being that in some cases these proclamations were made together on a certain date, though their execution occurred at particular intervals afterward. But on the regulations for calculating the price of property in accordance with the proximity of the Jubilee, North is forced to admit the contradiction:

> Lev. 25.16 says that the price of property shall be diminished in proportion to the nearness of the Jubilee; we cannot of course excise this as a gloss simply to fit an espoused interpretation; but it would be preferable to strain understanding of this verse rather than to forego all the converging lines of evidence relative to the true character of property-law.[1]

We fail to see how any amount of straining can make such calculations of price depend on anything but a fixed date unrelated to the commencement of the contract. In fact, North is saying no more than that if one alters the content of the Jubilee laws one may eventually arrive at a set of regulations which may well have been practical. This cannot be regarded as valid methodology. It does not prove that the laws were ever applied in this form, and in the absence of positive historical evidence from the period to which its practice is assigned by North, a verdict of *non liquet* must be given to this theory.

North's comprehensive study, however, brings out a number of points which are worth noting: (l) He rightly emphasizes the connection between the sale of land and servitude on the one hand, and insolvency on the other. The latter state is undoubtedly the background to

1. *Sociology*, p. 174.

both the Sabbatical and Jubilee regulations. The author of Leviticus 25 appears to assume that no one would sell their family estate except out of economic necessity (v. 25). (2) The most troublesome aspects of the Jubilee are its simultaneity, universality, and *cyclical nature*. All three have to be stripped away in order to discover a practical function for the regulations. We shall return to this point in more detail later.

A different approach is adopted by E. Neufeld, who considers the Sabbatical year and Jubilee as ancient traditional law which received its legislative form from attempts at revival during the period of the division of the monarchy.[1] He suggests that the Sabbatical year originated from a stage when there existed in Israel a system of tenure based on holding of common lands which were periodically distributed. Each seventh year was a fallow year during which, in the early days, a process of distribution of land took place. This type of land tenure, however, was already obsolete by the period of the Book of the Covenant. Isolated instances must have occurred in much later days, but on the whole this form of tenure was superseded by the widely recognized economy based on private possession of separate heritable fields. Its role as an equalizing factor in society was taken over by release of debts every seven years. Neufeld does not detail the origin of the Jubilee, but assumes it to be similar, although later fused with other elements. It is difficult to see how a fifty-year distribution could fit in with a seven-year distribution: the Jubilee would seem to be otiose in such a system. More important are the terms of the Jubilee legislation. Lev. 25.10 and 13 both speak of a *return* to one's *possession*. This entirely conflicts with the concept of a *re-distribution* of land, which involves the loss of one plot and the gain of a new one. Indeed, the whole of this legislation seems to assume private, individual ownership. The mention of a return to family and possession in v. 10, and the discussion of v. 25ff. with its involvement of the question of redemption, confirm North's view that the point at issue is the release of real and personal security. If, on the other hand, we ignore the Jubilee regulations and concentrate on the Sabbatical year alone, then the element of land distribution is absent altogether. Neufeld adduces parallel evidence of a seventh-year fallow from Ugarit, but not of land distribution. The connection between the two is assumed

1. 'The Socio-Economic Background to *Yobel* and *Šemiṭṭa*', 33 *Rivista degli Studi Orientali* 33 (1958), p. 53.

for the purposes of the theory; it is not demonstrated. The view that 'originally' the situation must have been as Neufeld describes it, in spite of its not being reflected in the existing legislation, returns us to the problem of methodology discussed above; it pushes the institution back into a period for which there is little or no evidence.

The second part of the theory is that attempts at revival of the Jubilee took place during the tumultuous days which followed the division of the monarchy in ancient Israel (c. 925 BCE). They were embodied in the anti-monarchistic, Yahwistic, nomadic revolt of Jehu and Jonadab, whose ideal was to destroy the evils of the new civilization and to return to primitive social and religious tribal conditions based on social justice, freedom and independence of the simple people as maintained in the old desert life. With the accession of Jehu in Israel and Jehoash in Judah, the way was opened for the application of those ideals.

How successful and long-lasting this attempt at revival was, Neufeld does not presume to surmise—it certainly receives not the slightest reference in the biblical account—but if we accept his central theme that these laws were the product of 'anti-progress' forces, then it is as good as admitting that they were not practically applied. The 'fifty-year' provision again provides the main problem: if it is designed to revive periodic re-distribution of land, then it is inaptly phrased. We would have to assume, therefore, that the draft before us represents neither the original organic law nor a revived version of it.

Another possibility is that the revival did not strictly involve the custom of re-distribution, but simply of the return of dispossessed peasants to their lands. This is quite feasible as a one-time measure arising out of a populist revolution. But legislation making it a regularly recurring event cannot be regarded as more than a mere manifesto unless evidence of what was essentially a revolutionary action actually occurring in this regular fashion is adduced. In a separate section Neufeld does indeed discuss the evidence for the practical enforcement of these laws. Pre-exilic evidence of a fallow year, both for the Sabbatical (2 Chron. 36.21) and the Jubilee (2 Kgs 19.29; Isa. 37.30) is adduced. But of release of debts there is no such evidence, and of the land-release of the Jubilee only the one obscure reference in Isa. 61.1 to a coming *drwr* and *šnt rṣwn*. Neufeld concludes:

> There is no doubt that the available evidence of the *Yōbēl* regarding the observance is extremely scanty. In spite of this it is submitted that it was

> effective in practice, not only originally but also when it was revived. Its main elements, such as the inalienability of land, the *ius redemptionis*, the release of slaves, the pentacontial system, are part and parcel of the real life factors of ancient Israel's framework...[1]

This may be so, but the question remains whether the legislative provisions before us were the practical expression of these elements or merely an academic collation of them.

The Laws in the Context of Ancient Near Eastern Sources

The most obvious evidence of the practicality of the biblical institution would be the existence of parallel institutions in the surrounding civilizations. In this regard C. Gordon first remarked on the fact that Nuzi transactions often mention that the tablet was written *ina arki šûdûti*, 'after the *šûdûtu*'.[2] Another, rarer, formula with the same function was *ina arki andurāri*. Since there must have been some concrete advantage for one of the contracting parties to make the contract 'after' and not 'before' the *šûdûtu* or *andurāru*, Gordon claimed that these terms were analogous to the Sabbatical and Jubilee, the term *andurāru* being related to and synonymous with *drrwr* of the Bible. Evidence from various documents has since shown, however, that *andurāru* merely refers to any concrete instance of release, both of persons and things (such as land), from existing obligations or slavery. Thus the prologue of the law code of Lipit-Ishtar states that Lipit-Ishtar effected the release (AMA.AR.GI_4 = *andurāru)* of the sons and daughters of Sumer and Akkad on whose neck slaveship had been imposed. Again, an Old Babylonian document shows a 'release' of property resulting in its return to its owner: VAT 6357, which includes the following lines: '[As for] the orchard, the acquisition of Bu [...which] for the second time was given to Apil-ilišu, the chief of the Amorites, and the house worth 1 mina of silv[er], the King est[ablished] the *andurāru* of the ho[use and the orchard] and made [them] return to us'. 'Establishing the release' of a particular piece of immoveable property in this document was clearly due to the king's decision in an individual case.[3] Likewise sec. 18 of the Edict of King

1. 'Socio-Economic Background', p. 122.
2. 'Parallèles nouziens avec lois et coutumes de l'ancient testament', *RB* 44 (1935), p. 38.
3. J. Lewy, 'The Biblical Institution of Deror in the Light of Akkadian Docu-

Ammi-ṣaduqa, the most important document for our purposes, states:

> If a free man of Numḫia, of Emut-balum, of Ida-maraz, of Uruk, of Isin, of Kisura, [or] of Malgium, has 'bound' an obligation (*eḫiltum*) and [has given] himself or his wife or children into servitude or as a pledge. . . *because the king has established equity for the land, it is released: his freedom is established* (*aššum šarrum mīšaram ana mātim iškunu uššur andurāršu šakin*).[1]

This clause also reveals the relationship between *andurāru* and an important institution of the Old Babylonian period—*mīšaram ana mātim šakānum*, 'to establish equity for the land'. While *andurāru* was the specific state of 'release', the misharum act was a general decree by the king which included as its major component acts of release, but of course of classes rather than individuals. The proclamation of a misharum was an institution of the utmost significance in Old Babylonian society. It was originally thought that each king proclaimed a misharum as a once-only measure upon his accession to the throne, but J. Finkelstein has shown that misharum enactments might occur several times at intervals throughout a king's reign.[2] For RimSin of Larsa there is a record of at least three such enactments, falling at about the 26th, 35th, and 41st years of his reign; Sinmuballiṭ enacted one in his 8th or 9th year; Ḫammurabi in his first year, which is commemorated in a formula for his second year: 'the year [when] he established equity in the country' and probably also in his 12th, 20th, and some time after his 30th year; Samsuiluna in his first and 8th year; Ammidiṭana in his first and 20th; and Ammi-ṣaduqa in his first and 10th year. Lewy[3] also cites the date formulae: 'the year when king Kaštiliašu established equity', and 'the year when king Kaštiliašu established equity for the second time', which figure in Old Babylonian documents AO 4656 and Ml from the kingdom of Ḫana.

The misharum act had three main effects: the cancellation of taxes, the cancellation of public and private debts and/or arrears, and the

ments', *Eretz Israel* 5 (1958), pp. 21, 27.

1. Cf. Codex Hammurabi sec. 117 and see *Chicago Assyrian Dictionary*, I, pt. II, pp. 115-16.

2. 'Some New Misharum Material and its Implications', in *Studies in Honor of Benno Landsberger* (1965), p. 233. F. Kraus, in the same publication, is more cautious ('Ein Edikt des Königs Samsu-iluna von Babylon', p. 229).

3. 'Biblical Institution', p. 29.

introduction of miscellaneous reforms. A natural consequence of the second was the release of persons in debt-bondage and the return of lands seized for debt. Section 2 of Ammi-ṣaduqa's edict[1] states: 'Whoever has lent an Akkadian or an Amorite corn or money on interest or [...] and has drawn up a tablet, because the King has established equity for the land, his tablet is broken, he shall not cause to be returned the corn or money on the tablet'.

'Breaking the tablet' (*ṭuppam ḫepûm*) was the general term for annulment of a contract,[2] but that it could describe a very concrete act is shown by a petition addressed to a king of this period which is published by Finkelstein.[3] The petitioner relates that when the king instituted the misharum the judges accordingly reviewed the cases of the citizens of Sippar, 'heard' the tablets of purchase of field, house and orchard, and ordered broken those in which the land was to be released by the terms of the misharum. Several officials affirmed the petitioner's tablets, but an (apparently) higher official, 'The Captain of Barbers' broke them in his *bit napṭarim*. The petitioner collected the pieces and showed them to the officials but they declared their helplessness before the 'Captain of Barbers'. Lines 46–49 continue: 'To you, O Divine one, I have [therefore] come. Let my lord offer me the ruling in the case of the breaking of tablets in the absence of judges and the principal party to the case.'

This document, then, shows the misharum act to be a living institution which had a real effect on the business affairs of the Babylonian citizens. What were the circumstances of such drastic action? According to J. Bottero[4]

> les dispositions exonératoires edictées par Ammi-ṣaduqa dans son édit, ne peuvent bien s'entendre que comme autant de remèdes appliqués à une situation économique dangereusement désorganisée. Et ce désordre, réduit à l'essential, peut se définir comme l'endettement désastreux de la majorité du peuple travailleur, paralysant son activité de production, ou, pour le moins, ne l'encourageant pas assez pour que le rendement en fût à niveau des besoins collectifs

1. Transliteration, translation and commentary by F. Kraus, *Ein Edikt des Königs Ammi-Ṣaduqa von Babylon* (SDIOAP, 5; Leiden: Brill, 1958).
2. Cf. J. Alexander, 'A Babylonian Year of Jubilee?', *JBL* 57 (1938), p. 75.
3. 'Misharum Material', n. 17.
4. 'Le désordre économique supposé par le rétablissement de l'équité', *JESHO* 4 (1961), p. 152.

The misharum acts, therefore, were acts involving an element of desperation which, like price-fixing regulations, attempted to curb the worst effects of an economic condition without approaching the underlying causes thereof. They were, of course, only temporarily effective, as their very repetition proves.

The edicts undoubtedly had a political motivation, as widespread enslavement or landlessness as a result of indebtedness could well lead to internal disruption and uprisings in the kingdom,[1] but the presence of a religious element should not be underrated. By ordaining 'justice' for the land, particularly at the opening of his reign, a king demonstrated his quality as a ruler according to law (*šar mīšarim*)[2] 'instituting the misharum for Shamash who loves him'.[3] It is worth comparing the activity of these same kings in drawing up 'law codes', whose primary purpose was to lay before the public, posterity, future kings and above all, the gods, evidence of the king's execution of his divinely ordained mandate: to have been the *rē'ûm* (lit. 'shepherd'—a king who makes just laws) and the *šar mīšarim*.[4]

Before concluding this survey I should mention also a neo-Assyrian contract: K 438.[5] The document defines one Ḫananu as owner or possessor of a landed estate which was to be 'surrendered', and relates that Silim-Aššur 'acted' and took the estate *ina libbi*, 'instead of' or 'on account of' 34 shekels of silver. Silim-Aššur was for a number of years entitled to the usufruct of the estate. On the other hand, he was bound to accumulate a reserve in grain; when this reserve would correspond to the value of that sum of 34 shekels, the estate was to revert to Ḫananu. It is, in other words, an antichresis contract. An

1. Cf. Livy, *Ab Urbe Condita* 2.23-24. The secession of the plebs was the result of the complaints of enslaved debtors.

2. D. Wiseman, 'The Laws of Hammurabi Again', *JSS* 7 (1962), p. 161.

3. Finkelstein, 'Misharum Material', text 1.3.

4. Finkelstein, 'Ammi-ṣaduqa's Edict and the Babylonian "Law Codes"', *JCS* 15 (1961), p. 91. Wiseman ('Laws') suggests a parallel between this concept and the verdict on some of the Hebrew kings that they had 'done justice in the eyes of Yahweh' alongside mention of their various 'reforms' (usually attributed to the opening years of the reign) and their continuing the practice of their predecessors. Thus Asa and Josiah 'did justice (*hyšr*) in the eyes of Yahweh as did David' (1 Kgs 15.11), Jehoshaphat as did Asa (2 Chron. 20.32), Azariah as did Amaziah (2 Kgs 15.3) and Amaziah as did Joash (2 Kgs 14.3).

5. Published by Lewy, 'Biblical Institution', p. 30.

additional clause appearing after the witnesses and date reads: *šumma durāru šakin Silim-Aššur kasapšu idaggal,* 'If a release is established, Silim-Aššur will claim his silver'. This additional clause clearly implies that, should a general release be decreed, the creditor Silim-Aššur would retain his claim for payment of the money but would be prevented from continuing to exploit landed estate temporarily transferred to him by his debtor. It is equally obvious that upon the 'establishing' of a general release the estate was *ipso facto* to revert to him.

The andurarum and its wider form, the misharum, therefore represent an institution which appears throughout the ancient Near East from the third millenium onward. Almost every commentator cited has attempted to establish a connection with the biblical Jubilee and Sabbatical year, and there can be no doubt that the above examples show them to have a basis in contemporary practice. Cancellation of debts, release from slavery, and restoration of land to its original owner, as the result of either a specific or general enactment, were all regarded as common-place events in the ancient Near Eastern sources. But on one point the commentators are forced to admit that the institution of cuneiform sources differs absolutely and fundamentally from the biblical institution: there is no fixed, cyclical date for a 'release'. On the contrary, throughout the sources it is an unpredictable and irregular event which is entirely dependent on the will of the king, who is the sole source of edicts of release.[1] The neo-Assyrian document K 438 mentioned above shows particularly clearly that the contracting parties were not sure whether or when a *durāru* would be 'established'. As Kraus points out, the greater part of the releases share the peculiarity that they aim at a momentary effect only. The clauses of protection in contracts—which are employed like a date—of the type 'after the release' (*ina arki andurāri*) clearly show that the releases were exclusively applicable to existing and not future

1. Kraus, in his study of Ammi-ṣaduqa's Edict (*Königs Ammi-Ṣaduqa*) concluded (p. 239): 'Zunächst ist evident, daß die königsliche Erlässe in der altbabylonischen Zeit war keine gergelte, aber eine häufige Erscheinung waren' and in his study of Samsu-iluna's Edict ('Königs Samsu-iluna') said: 'Im Staate Babylon des Hammurabi und seiner fünf Nachfolger war ein durchlaufender siebenjähriger Zyklus von Erlassen unbekannt. . . ' in regretful reply to Landsberger's request: 'Please write me at once a sensational note about the *šemiṭṭa* (every 7th year) in O.B.!'

contracts.[1] There do exist permanent reforms in the misharum edicts, but they are secondary additions not involving release and significantly omit the misharum clause[2] (i.e. the explanatory clause in each section: 'because the king has established equity for the land'). 'The *mīšarum* act in the strict sense then consisted of a series of measures designed to restore 'equilibrium' in the economic life of the society, which, once presumed to have created the necessary effect of a *tabula rasa* for certain types of financial or economical obligations, ceases to have any force'.[3]

Various attempts have nonetheless been made to resolve this discrepancy in a way which will allow the biblical laws in their present form to fit into the pattern of the cuneiform laws or vice-versa. According to J. Lewy,

> The salient feature by which the biblical law differs from the practice attested by the above-cited sources from the reigns of Sumu-lâ-el, Ḫammurapi, Samsuiluna and Ammi-ṣaduqa, namely the injunction to proclaim a release at fixed intervals, is likewise indicative of the ancientness of the principles transmitted to us in Lev. 25.10ff. For such a regulation, which offered the advantage of making the proclamations independent of an absolute ruler's arbitrariness as well as of the accession of a new king, was obviously imperative in states not headed by a monarch.[4]

This argument, it will be noted, uses the same method which we have discussed above of pushing the law back into a period beyond legal memory. Its content raises problems which will be discussed below.

Finkelstein tries the opposite approach. Referring to the cuneiform sources he states:

> the inner logic of the situation—once the recurrent character of the misharum is established, as it now is for the Old-Babylonian period at least—requires the further presupposition that enactments of this type had to recur at fairly regular or predictable intervals. Were this not the case, and had the kings been free to announce the misharum without warning and at widely disparate intervals, there would have occurred a drying-up of the sources of credit and a virtual paralysis of economic activity every few years—after a reasonable lapse of time from the previous enactment.

1. Kraus, *Königs Ammi-Ṣaduqa, loc. cit.*
2. See Finkelstein, 'Ammi-ṣaduqa's Edict', p. 91.
3. 'Ammi-Ṣaduqa's Edict', p. 100.
4. 'Biblical Institution', p. 30.

> At worst, arbitrariness in such activity on the part of the crown would have served only to encourage subterfuges on the part of creditors and debtors, buyers and sellers, etc., to avoid being affected by the misharum, so that the very purpose of the act would have been frustrated.[1]

With respect, the inner logic of the situation requires that the opposite be the case. The difference is that between a law and an administrative act. A law is in general *prospective* and, because it is designed to effect future conduct, it is expected that people will alter their conduct accordingly. An impractical law is one which allows people to alter their conduct so as to avoid being affected by it, but not to the manner desired by the legislation. An administrative act, on the other hand, being generally retrospective, does not intend to affect, except perhaps indirectly, people's conduct of their affairs; only the state of affairs created thereby. Unlike a law it therefore must not be too predictable, or the state of affairs which it is intended to affect will 'disappear', either completely until the date of operation is past, or by the assumption of various guises. In modern examples, indeed, secrecy over a particular edict is considered vital in order to avoid 'speculative activity'. We are thinking in particular of a devaluation of currency, which provides a striking parallel to the Old Babylonian misharum act. It is, we are told, the result of an underlying economic weakness which expresses itself in a balance of payments crisis. The effects of the crisis are temporarily relieved by this administrative act, but the latter does not remove the underlying causes, *as its very repetition proves.* In certain countries such acts are also quite predictable, and are certainly often enough predicted. Will future historians therefore conclude that the 'inner logic of the situation' required that devaluations be fairly regular or predictable in order to avoid subterfuges?

Conclusions

Our verdict, therefore, on the biblical law of the Jubilee is that while its basic idea of a release reflects a practicable and practised institution, that part thereof which is academic and theoretical is the *stipulation of its regular recurrence every fifty years.* This conclusion throws light on the biblical legislator's method of work. He took a concept well known in the ancient Near East, an act whose justice and

1. 'Misharum Material', p. 245.

religious aspect were fully recognized, but which, being in the hands of practical, secular monarchs, was but infrequently and irregularly performed, and he 'institutionalized' it, making it a regular cyclical event like a fallow year.[1] The biblical legislator was well aware of the drastic theoretical consequences: hence the recognition in his legislation that all land-holding will be in the form of a lease no longer than fifty years. But he did not foresee all the practical consequences, in particular those pointed out by Pedersen and those attributed by Finkelstein to the edicts. (As we have seen, in the latter case they apply to the opposite situation.) A brief example may be added: even though release of debts is not mentioned in the Jubilee legislation, loss of the means of security would lead to a drying-up of credit before the Jubilee or to conditions being inserted into contracts to make the debt fall due after the Jubilee year. If the law were really effective the size of loans available would decrease as the Jubilee approached and the value of security available accordingly shrank.[2]

The fortunate circumstance of retention of older legislation alongside the new enables us—for one branch of the Jubilee laws—to follow within the development of Hebrew law itself, a process of institutionalization similar to that described above. With regard to slave-release we have in Exod. 21.1-2 regulations from the Covenant Code, which is recognized as the oldest level of legislation in the Bible. They stipulate the manumission of a Hebrew slave after six years, and clearly this refers to each individual period of service and not to a universal sixth year release. In Deut. 15.12-18 these rules are repeated with minor variations. But when we come to the Levitical legislation a change has occurred. All possibility of manumission after six years' labour has disappeared, and a universal manumission every fifty years has replaced it.[3] The law has therefore become cyclical, universal and simultaneous, and although its starting point was not an

1. It is this monarchic institution to which Isaiah is most probably referring in his 'proclamation of liberty' (61.1). The Levitical legislation may well have been the institutionalization of the prophetic concept, rather than taken directly from the misharum edicts, etc.

2. This was foreseen by the Deuteronomist, the effect of whose law was more direct. The sanction that he provides is not in the realm of the justiciable (Deut. 15.9-10).

3. E. Davies argues that a seven-year cycle had developed by Deuteronomic times ('Manumission of Slaves under Zedekiah', *OTS* 5 [1948], p. 63).

administrative act, it was at least a law linked to the terms of the particular transaction, with which all connection has now been lost.

A similar development may also have taken place with regard to the fallow, since the Exodus version of this law does not say that all the fields must lie fallow in the same year, which is plainly the intention of the Levitical legislation.

3. *The Structure of Leviticus 25*

A brief examination of this chapter will help to elucidate the legislator's method. The chapter is generally recognized as being composite: laws of varying levels of antiquity have been juxtaposed.

1. *Fallow year.* We are not competent to judge the practicality of the seventh-year fallow, but there appears to be a good deal of evidence for its existence. It should be noted that the fallow year, of all the laws under discussion, is the only one outside the realm of commercial relations—it involves an individual only and not bilateral relations—and the situation is, therefore, more susceptible to religious injunctions. Moreover, there seems to be a certain amount of tension between the fallow and the other laws. The latter imposes duties on other sections of society in favour of the peasant farmer, whereas the fallow, particularly in Exodus, imposes duties on the farmer in favour of others. A man returning to his inheritance in the Jubilee will find it already lain fallow for one year and is forbidden to harvest or even to sow until the next (v. 11). There are unambiguous although late references to a seventh-year fallow in the narratives: the seventy years' captivity and desolation of the land was regarded as making up for unobserved Sabbaths of the land (2 Chron. 36.21). In Ezra's time the people covenanted to forego the crops of the seventh year (Neh. 10.32).[1] The legislator in Leviticus adds to the seven-year system a further fallow in the fiftieth year and repeats the relevant regulations. Thus in v. 11 it is stated: 'in it [the Jubilee] you shall neither sow, nor reap what grows of itself (*spyḥyh*), nor gather grapes from the undressed vines'. But this is what grows of itself in the second year

1. Also significant is the idea of a seven years' sterility or fertility cycle to be found both in the Bible and throughout the ancient Near East. See C. Gordon, 'Sabbatical Cycle or Seasonal Pattern? (Reflections on a New Book)', *Or* 22 (1953), p. 79.

and is not *spyḥ* but *sḥyš* (2 Kgs 19.29, Isa 37.30). The legislator, in other words, has transferred the seventh-year regulations unaltered to the Jubilee year, which tends to confirm the impression that the Jubilee was an academic invention rather than actual custom.[1]

2. *Redemption of land.* Here again we find very old regulations whose practice is evidenced in the narratives: Ruth 4; Jer. 32.6ff. Of particular interest are vv. 29-30, dealing with the redemption of a house in a walled city.[2] The legal terminology appears to be old: J.J. Rabinowitz noted the striking similarity of *lṣmytt ldrtyw* in v. 30 with the phrase *ṣamit adi dārīti* in conveyances from Ugarit.[3] Also of interest is the verb *qwm*. It has here the technical, legal meaning of 'to pass' (of property). It is attested in this technical sense in only two other places in the Bible: in the narrative of the purchase of the cave of Machpelah, and in another block of redemption laws—in Lev. 27.19. This verse, v. 30, has another significant feature: all the redemption regulations are fitted into the Jubilee pattern with the curious exception of houses in walled cities. It may well be that the cities 'are something new and strange in Israelite life and do not depend upon the old Israelite ideas of kindred and property'.[4] But there is also a more formal ground: a law allowing absolute ownership of such property failing re-purchase within a year existed as an old exception to the rule of redemption. Whereas the Jubilee only supplements the laws of redemption, it would contradict this exception. In such a confrontation the Jubilee must give way. The legislator cannot eradicate the traditional law, he can only add to it.[5]

3. *Redemption of slaves.* These regulations, on the other hand,

1. N.H. Snaith, *Leviticus and Numbers* (Century Bible; London, 1967), p. 163.

2. 'If a man sells a dwelling house in a walled city, he may redeem it within a whole year after its sale; for a full year he shall have the right of redemption [v. 30]. If it is not redeemed within a full year, then the house that is in the walled city shall be made sure in perpetuity to him who bought it throughout his generations (*wqm hbyt... lṣmytt lqnh 'tw ldrtyw*); it shall not be released in the Jubilee' (RSV).

3. 'A Biblical Parallel to a Legal Formula from Ugarit', *VT* 8 (1958), p. 95. Cf. R. Yaron, 'A Document of Redemption from Ugarit', *VT* 10 (1960), p. 83.

4. J. Pedersen, *Ancient Israel* (London, 1926), p. 88.

5. It is significant that the one attempt to restrict the redemption laws, in v. 31, takes the form of a restrictive interpretation only: 'But the houses of the villages which have not walls around them shall be reckoned with the fields of the country; they may be redeemed, and they shall be released in the Jubilee' (RSV).

seem to contradict the above statement. The old law of seventh-year slave-release has entirely disappeared, to be replaced by a fifty-year release—scarcely a case of supplementation. Moreover, the seventh-year release of debts has entirely disappeared without even finding a place in the Jubilee.

A closer examination of the various sources, however, reveals the following pattern. The law of fallow, which occurs in Exodus, is absent from Deuteronomy but re-appears in Leviticus juxtaposed with a fifty-year fallow. The law of slave-release, which also occurs in Exodus, re-appears in Deuteronomy in an altered form and again in Leviticus, but only as a fifty-year cycle. The law of debt-release, whose first appearance is not until Deuteronomy, does not re-appear at all in Leviticus. On the other hand redemption of land, which appears in no other code, is included in Leviticus although part of it contradicts the Jubilee provisions. The conclusion is, therefore, that the Levitical legislator was forced to take account of the old traditional laws of which there was still consciousness even if they were in desuetude, but that the Deuteronomic code did not represent such laws and its provisions could therefore be safely altered or ignored.[1] The slave-release of Exodus, for example, had passed from *lex extincta* to *lex ferenda* in a new form in Deuteronomy, and was therefore malleable material for the Levitical legislator.[2]

A final question is why did the Levitical legislator adopt a fifty-year

1. The alternative explanation, that the Levitical code is earlier than the Deuteronomic, is militated against by the faithful preservation of the old slave law in Deuteronomy, the more advanced process of 'institutionalization' in Leviticus, and the movement in Leviticus to a fifty-year cycle, away from the seven-year cycle still preserved in Deuteronomy. J. Morgenstern, indeed, considers that the authors of Lev. 25 were fully acquainted with the legislation for the Sabbatical year in Deut. 15 and deliberately abolished or amended its regulations ('The Book of the Covenant IV', *HUCA* 33 [1962], pp. 77-78).

2. The demands of the slave-release law have moved out of the realm of the practical in Deuteronomy with its demand of a generous send-off for the released slave—see D. Daube, *The Exodus Pattern in the Bible* (London, 1963), p. 51. The Deuteronomic material may have been regarded as one with prophetic utterances by the Levitical legislator, who therefore used both as raw material for his new system. Jeremiah calls for a release (*drwr*) of slaves and quotes legislation which appears to be a development from Deuteronomy in the direction of the Levitical system on the lines which we have described for the process of 'institutionalization' (Jer. 34.8ff.). Note also the reference to *hyšr* (= *mīšarum*) in connection with *drwr* in v. 15.

pattern? A straightforward answer would be that fifty years is as good a round number as any. If it is the Priestly source that we are dealing with here, then its fascination with round numbers is well-enough attested. we prefer to admit that there may have been a good reason, but what it was we do not know. Numerous attempts have been made to find working parallels of the pentacontad system.[1] We can only adduce a note of caution: the adoption of a number by one society from another as being of religious significance need by no means include the adoption of the particular ritual or institutions or even ideas formerly associated with that number.

4. *The Date of the Jubilee Legislation*

The 'dating' of laws is a complex question, which follows principles other than those applicable to literary sources. First, a single law may have two dates, that of its creation and that of its inclusion in the code in which it is now found. If the law is an organic one, that is, derived from judicial decisions like the English common law, then it is in fact impossible to fix the date of its creation. Moreover, a second criterion is involved in the case of laws: whether they are actually applied or not. Thus while a law may have been created in early times and included in a code at a much later date, it may never have been put into practice, or, if it was applied, by the time of its inclusion it may long since have been in desuetude. Further complications, such as the fact that the meaning of a law may change in time by re-wording or simply by reinterpretation, need not concern us here.[2]

Fortunately our case is a relatively simple one. The Jubilee laws are not organic, their impracticability shows that. They are a late stratum in the code of laws in which they are found. They are not at all mentioned elsewhere in the Bible, in contrast to an earlier stratum in the same code, the redemption laws, which had a strong influence on ancient Israelitic thought. There are only two ways, therefore, by which an early date may be assigned to them. First, it might be argued that they were a dead letter almost from the moment of promulgation,

1. See J. Lewy, 'The Origin of the Week and the Oldest West Asiatic Calendar', *HUCA* 17 (1942), p. 96, and the literature cited in North, *Sociology*, ch. V.

2. See further D. Daube, 'Concerning Methods of Bible-Criticism', *ArOr* 17 (1949), p. 88, on the problems of dating laws.

and yet somehow continued to exist until they were included in the present code. This proposition, unlikely at the outset, must fail for total lack of evidence. Secondly, it might be argued that they were issued as a manifesto from a source not having legislative authority. This would make them a literary, rather than a legal, composition. The literary source in which these laws are found is termed by critics the 'Holiness Code' and is generally thought to have been composed towards the end of the kingdom or during the first exile.[1]

Two further pieces of evidence as to the date present themselves from the text. First, in vv. 32-33 the exception of walled cities is qualified by yet another exception—for Levitical cities which may be redeemed like agricultural land and are subject to the Jubilee. A possible inference from this is that these cities existed only in theory at the time of legislation, and therefore presented no stumbling block to the traditionalist mind. Secondly, in 27.16-24 votive offerings of land are discussed in the context of the Jubilee. A field donated in the year of the Jubilee is to be assessed at its full value, whereas if it is donated some years later the value is assessed according to the years remaining to the next Jubilee (v. 18). Unlike other alienated property, however, there is no question of such a field returning to its former owner in the Jubilee year, unless he pays ransom before then; even if he defiantly sells property to a third party, it belongs inalienably to the priest after the Jubilee (v. 21). The hand of a priestly source is writ large here. It is, however, not clear whether Leviticus 25 and 27 were excerpts taken from the same priestly work for incorporation into the Pentateuch, or whether ch. 27 is merely a subsequent addition which takes some account of the Jubilee laws.[2]

A final point is the mention by Ezekiel of return of property to the prince in the 'year of liberty' (46.16-17). Ezekiel's thinking seems to be in line with that of the Levitical legislator, so that a proximity of date might be surmised, but since we do not know whether Ezekiel was inspired by Leviticus, or Leviticus by Ezekiel, or whether they were both inspired by a common fashionable theory, a more exact dating is impossible.

We previously concluded that the Jubilee laws represented a further development of ideas in the Covenant and Deuteronomic codes. On

1. See, e.g., M. Noth, *Leviticus* (OTL; London: SCM Press, 1965).
2. See Noth, *Leviticus*, ch. VII.

this basis, and in the light of the foregoing discussion, we therefore suggest that the laws were composed after the composition of the Deuteronomic code, possibly in exilic times.

Chapter 3

REDEMPTION OF LAND

1. *Sources*

The term of redemption, *g'(w)lh,* is widely used in the Bible. It basically denotes the rightful getting back of a person or object that had once belonged to one or to one's family but had been lost. In the laws this takes the form of avenging a relative's murder ('redemption of blood'),[1] of buying back a relative from slavery,[2] or of buying back a relative's land from an outsider.[3] The term is also used of the commuting to money payments of offerings for sacrifice.[4] In narrative, and in particular, prophetic texts the term is given a wider meaning. It denotes the saving of a person from the clutches of his enemies by a powerful relative, usually God. The enemies may be foreign nations, creditors or even such abstract forces as sin or death.[5] The idea of payment, which exists in some of the laws, retreats into the background. We must be careful, therefore, in examining the sources, to remember that the term *g'(w)lh* had not only several legal meanings but also had fairly general currency in the literature of ancient Israel.

The laws relating to redemption of land are contained in Leviticus 25, and their practical operation is recorded in two narratives: Jer. 32.6-15 and Ruth 4. The laws of Leviticus state that if a man is forced through poverty to sell his estate, then his kinsman shall redeem it. If the vendor has no such kinsman, but finds sufficient funds, he may buy it back himself. A further special regulation for houses in walled cities allows the vendor a right of re-purchase within a year of sale.

1. Num. 35.19ff.
2. Lev. 25.47ff.
3. Lev. 25.25ff.
4. Lev. 27 *passim*.
5. See D. Daube, *Biblical Law* (Cambridge, 1947), pp. 39ff.

2. *Operation*

The context of these laws was the old Israelite concept of family property. The family estate, nominally that which was allotted at the time of the conquest, is not a material sale-commodity. It must be prevented from passing into the hands of strangers. The only circumstances in which the Bible can conceive of this happening is a sale under pressure of poverty. The story of Naboth gives a striking example of this attitude.[1] If the property is lost, then it is the duty of the nearest relative to bring it back into the family.

The story of Jeremiah's purchase of the field at Anatoth gives us a picture of the mechanics of this institution. Jeremiah's cousin Hanama'el comes to him to request that he purchase the cousin's field at Anatoth. Hanama'el reminds Jeremiah that he has the 'right of redemption'. Jeremiah performs what is clearly a straightforward purchase transaction.[2]

This narrative contains two main contradictions with the picture presented by the laws. Firstly, it is a case of pre-emption, not redemption. Secondly, Jeremiah apparently buys the field for himself, whereas the laws give the impression that the redeemer restores the vendor to the land.

The first point does not present a serious discrepancy. The laws do not exclude the possibility of pre-emption—as with all ancient Near Eastern codes, they are not comprehensive. On the other hand, their genuineness is not in serious doubt. A right of pre-emption would simply become a right of redemption—a charge on the property—if the sale were made without notice to the redeemer. It was widely

1. 1 Kgs 21.

2. Not relevant to our discussion is Jer. 37.12, although many scholars have mistakenly considered it so. The Revised Standard Version translates: 'Jeremiah set out from Jerusalem to go to the land of Benjamin to *receive his portion there* among the people', following Jonathan and the Septuagint, and the verse has often been referred to as describing Jeremiah's (putative) formal act of possession of the land that he acquired from his cousin Haname'el. See, e.g., J. Pedersen, *Ancient Israel* (London, 1926), p 85 n. However, the context shows that the operative verb *ḥlq* here means not 'to share, receive a portion' but 'to flee, slip away'. This point was already noted by some of the mediaeval Jewish commentators: see, e.g., Kimche *ad loc*. Confirmation of this meaning comes from Akkadian, where the verb *ḫalāqu* means 'to escape, flee'. See *Chicago Assyrian Dictionary*, VI, p. 38 (2).

accepted in the ancient Near East that sale to a third party did not automatically extinguish the rights of relatives. *Nemo dat quod non habet.* The Babylonian contract of sales of real estate, for example, typically contained a clause stating that the family of the vendor were not to dispute the sale in future.[1]

The biblical law, however, allows not only a relative, but also the original vendor himself to buy back the land. Daube,[2] therefore, raised the possibility that the references to buying back by the vendor are a subsequent addition to the laws of purchase by relatives. This may be so from their formal aspect, but the genuine background of such provisions is shown by article 39 of the Codex Eshnunna: 'If a man became impoverished and sold his house—the day the buyer will sell, the owner of the house may redeem'.

The second point presents a more serious problem: for whose benefit did the law operate? Pedersen considers the Jeremiah version to present the true character of redemption of land:

> Redemption or restitution, *ge'ula* means the getting back of something which has been lost, the restitution of a breach. The breach to be avoided here is that the property, by being thrown on to the highest bidder, should pass out of the hands of the family. . . But the law contains no sentimental regulations that the kinsmen should assist the needy by keeping the property *for his person*. If he has not the strength to keep it for himself, he must lose it. The centre of gravity passes from him to a relative; he loses in importance what the relative gains, but the family, as family, loses nothing. The property is not left to chance, but remains in the kindred with which it is familiar.[3]

It is true that while the legislation of Leviticus gives the impression that the property is to be returned by the redeemer to its owner, a closer examination shows that this is not a necessary conclusion. No such obligation is expressly mentioned. It is contemplated by the law that lands in any case return to their owner at the Jubilee.[4] Whether the redeemer's task is to return it to the owner before then, or merely to make sure that it stays in the family in the meanwhile, is not clear.

1. R. Clay, 'Tenure of Land in Babylonia and Assyria' (University of London Institute of Archaeology Occasional Papers, 1), p. 25.
2. *Biblical Law*, p. 44.
3. *Ancient Israel*, p. 84.
4. The issue would not be affected even if the Jubilee Laws were a late interpolation into the redemption regulations. See our comments in Chapter 2, above.

If the former, then the law is wide open to abuse, for example by a wastrel son desirous of squandering his inheritance.

Some assistance is to be gained from the parallel institution of redemption from slavery. Here again, the laws give the impression that the slave went free. But evidence from many ancient legal systems[1] and from the Pentateuch itself shows that redemption was often no more than a change of master, although perhaps with enhanced chances of ultimate freedom. The narrow scope of the Levitical laws is to be noted: they apply only to a person enslaved to a foreigner. Slavery to one's own countryman was much preferable to slavery to a foreigner, and even better was slavery to one's kinsman. As Daube has shown, one of the themes of the Exodus narrative is the transfer of the Israelites from Pharoah's service to that of God.[2] He adds:

> Sometimes, quite possibly, the Israelites are thought of less as slaves to be rescued by a relation than as property withheld from its original owner and to be regained by him. That is the impression created by a passage like 'And I will take you to me for a people, and you shall know that I am the Lord your God who brought you out from under the hands of the Egyptians' (Exod. 6.7). The principle of a change of master would play the same role on this basis as on the other: the loss of inherited property affected the integrity of a family much as the loss of a member . . . Whether God acts as the mighty relation and protector of the people or as their original legitimate owner, the result of their deliverance must be the substitution of his rule for Pharaoh's.[3]

There is a further point. In Lev. 25.48-50, an order of relationship is given for the purposes of slave-redemption: brother, uncle, cousin, nearest relative. It is a safe assumption that the order was the same for the redemption of land. It is remarkably similar to the pattern of inheritance given in Num. 27.8-11: son, (daughter), brother, uncle, nearest relative. In both cases, in the absence of descendants, the right passes to the collateral line. If the redeemer were also a potential heir, he would frequently be intervening to buy back his own inheritance. Hanama'el says to Jeremiah, his cousin, 'the right of inheritance

1. See R. Yaron, 'Redemption of Persons in the Ancient Near East', *RIDA* 6 (1959) 155-76.

2. *The Exodus Pattern in the Bible* (London, 1963), ch. V.

3. *Exodus Pattern*, pp. 42-43.

(*yrš̌h*) and redemption is yours'.[1] This restores something of the idealistic nature of the institution, if it is known that Jeremiah is purchasing what will eventually be his by right of inheritance.

Missing from the list in Leviticus is the vendor's son. It would be interesting to know whether he was considered the first redeemer. If he failed to exercise his right, particularly because of his minority, did he lose the land forever to another branch of the family? This is the common, everyday case, and so neither the laws nor the narratives trouble to deal with it.

If the land were re-sold to a fourth party, did the right of redemption still obtain? It probably did, since otherwise the provisions concerning redemption would have been all too easy to circumvent, by the simple device of a fictitious transfer, following immediately upon the genuine sale.[2]

We come finally to the question of price. Jeremiah was very careful to note the exact price of the field, but he does not say by what criterion it was fixed. In the case of redemption, there are three possibilities: a fixed price, the market price, and the original price. By a fixed price I mean that the land had a single value which was generally considered the 'fair' or 'full' price, and did not fluctuate. If landed property was not regarded as a material sale commodity in ancient Israel, then it is a possibility to be taken into consideration, although there is no direct evidence of such a practice.[3] The laws of Leviticus suggest that the original price was taken, in that reckoning of the redemption price is done according to the 'balance' (*'dp*). The man who is redeeming the property may deduct from the original price the value of the crops which have been taken off the land. He pays the balance, that is, the value of the crops for the remaining years of the Jubilee.[4] On the other hand, rigid adherence to the original price might have some important drawbacks. Not only would it fail to take into account possible changes in the value of land, it would also

1. Jer. 32.8.

2. Cf. R. Yaron, *The Laws of Eshnunna* (Jerusalem: Magnes Press, 1969), p. 152.

3. Attempts to establish a fixed price were a feature of ancient Near East laws. See, e.g., Codex Eshnunna 1-4, 7-11; Codex Hammurabi 257ff.

4. Lev. 25.25ff. The important point is that even if the Jubilee provision itself is an interpolation, the original price is *assumed* as the basis for calculation.

discourage development of the property by the buyer.[1] It might, however, help to fix the original price at a stable level. At all events, the texts do not seem to consider the question of price a serious problem.

3. *The Book of Ruth*

Discussion of redemption in the Book of Ruth has been postponed until now because of the difficulties involved in understanding the law there recorded. Not only is it intermingled with the law of the levirate, but contains many puzzling features which appear to conflict both with the laws of Leviticus and the more straightforward account in Jeremiah. It has consequently been interpreted as a local variant,[2] as an early form of the laws,[3] and as a late version no longer conversant with the living law.[4] Nonetheless we shall attempt to show that the narrative presents the two institutions, redemption and levirate, in a working form, and that the combination of the two itself allows us a clearer picture of Israelite conceptions of inheritance and family property.

In order to understand the law of this narrative we must briefly consider the institution of levirate marriage. It would be outside the scope of this paper to enter into a complete explanation of this institution. One aspect of it alone concerns us: the link between the levirate and family property. The levirate is part of the same system of protection and continuation of the family estate as redemption of land. Boaz takes Ruth as his wife 'to raise up the name of the dead *upon his inheritance*, that the name of the dead be not cut off from among his brethren, and from *the gate of his place*'.[5] The purpose expressed in Deuteronomy for the law is that 'the name be not blotted out in Israel'. Neufeld considers that *šm*, 'name' refers to the inheritance itself, that is, it can signify property as well as name.[6] Although the

1. Cf. Yaron, *Eshnunna*, p. 153.
2. S. Loewenstamm, *Encyclopaedia Biblica*, III, p. 144 (in Hebrew).
3. M. Burrows argues that redemption originally involved support of the widow and the obligation to raise up a son for the dead as well. Thus the Pentateuchal legislation restricted the latter obligation to brothers only, the duty being too onerous for wider application. See 'The Marriage of Boaz and Ruth', *JBL* 59 (1940), p. 445.
4. Pedersen, *Ancient Israel*, p. 93.
5. Ruth 4.10.
6. E. Neufeld, *Ancient Hebrew Marriage Laws* (London, 1944), p. 47.

levirate attempts to 'raise up the name' of the dead husband through a legal fiction, we find that neither the name of Er in the Judah–Tamar story nor the name of Mahlon in the Ruth–Boaz story is mentioned in the genealogies of Perez and Obed. The names that Perez and Obed carry are those of their real fathers, Judah and Boaz. Even if we do not go so far as to identify the two, it is at any rate clear that survival of the 'name' depends upon the inheritance being maintained in the family. In Num. 27.4 the daughters of Zelophehad ask: 'Why should the *name* of our father be taken away from his family because he had no son? Give to us a possession among our father's brothers.'[1]

The levirate, therefore, works alongside redemption. Just as the right of redemption restores to the family property that is lost (or threatens to be lost) by alienation, so the duty of the levirate restores a family to its property from which it is separated by extinction of the male line. The logical consequence is that the duty of levirate marriage did not apply where the husband had died leaving no property.[2] There was no point in raising an heir to the deceased if there were no property for him to inherit. Children of the new marriage would have no land linking them to the first husband of their mother which might permit them to revive his name.[3]

Turning to the story of Ruth, in 4.3 Boaz informs the kinsman: 'Naomi, who has come back from the country of Moab, is selling the parcel of land which belonged to our kinsman Elimelech' (RSV). The first question which arises is how can Naomi, a woman, become pos-

1. Cf. T. and D. Thompson, 'Some Legal Problems in the Book of Ruth', *VT* 18 (1968), p. 79.

2. The law of levirate marriage is no more a rule of charity than the law of redemption. The childless widow went back to her father's home if he was alive (Gen. 38.11; Lev. 22.13). If she had no relations who were able or willing to take care of her, then she had nothing to rely upon except the charity which the Bible constantly admonishes Israelites to show to everyone lacking the support of kindred: 'strangers', fatherless and widows.

3. B. Perrin, 'Trois textes bibliques sur les techniques d'acquisition immobilière', *RHDFE* 41(1963), p. 193. It should be noted that Naomi's remarks at Ruth 1.11-13 do not refer to the *law* of levirate. If Naomi were to remarry, her son would belong to a different line entirely, and could hardly raise up his step-brother's name. Nor in this example are the daughters-in-law obliged to marry Naomi's future sons. Naomi is expressing the thought that she has nothing to offer them, neither land, nor husbands. Her remarks may refer to a common practice of convenience, but not to a legal obligation.

sessed of her dead husband's estate. The line of inheritance in the Bible appears to be strictly agnatic.[1] It is not certain that women could own property at all. The few references are obscure, and apply to women with sons.[2] A possibility is that a widow held the land on trust for her son until his majority. But this does not imply any right to deal in it, and in any case Naomi is childless. A further possibility is that the widow did indeed inherit the land, but that it passed into the property of her husband upon her subsequent marriage. Thus when a widow took off the unwilling levir's shoe, she not only took her own freedom but also the family land, which would then, on the analogy of the daughters of Zelophehad, pass to an outsider whom she might marry.[3] This latter theory does not seem to concur with the Bible's grouping of the widow among the other classes of landless, the stranger and the orphan. If, on the other hand, it were the case that women could not own property, the narrator's mistake would be so obvious to the contemporary reader that it could only have been inserted as an oblique reference to a more complex situation.

The second problem is whether Naomi is about to sell, or has already sold, the land. Most translations adopt the former version, on the assumption that the subsequent transaction is a case of pre-emption as in Jer. 32.7-15. This interpretation, however, raises grave diffculties. First the verb *mkr* is in the perfect tense.[4] Secondly, it assumes that Naomi has a right to own and alienate property. Thirdly, it comes as a surprise that Naomi has land at all. What happened to it while she was in Moab? And if she is a landowner, why does Ruth have to glean? Naomi herself says (1.21): 'I went out full, and the Lord has brought me home again empty'. Fourthly, if the transaction in 4.9ff. is supposed to be a purchase by Boaz from Naomi, it conforms to no

1. The rules given in Num. 27.8ff. appear to exclude widows, at any rate. On the question of daughters see Pedersen, *Ancient Israel*, p. 95.

2. Judg. 17.2-4; 2 Sam. 14.5ff. the story of the woman of Tekoa, which in fact hints that her husband's male collaterals, who are the redeemers of blood, would inherit if she were left no sons; 2 Kgs 8.3, 6—Shunamite woman.

3. Thompson and Thompson, 'Legal Problems', who also raise the possibility that although a woman could not be heir, she might be a legatee (cf. Job 42.15).

4. The perfect can be used for an intended action, but this use is only evidenced in direct speech in the first person and is an emphatic form: Gen. 1.29; 15.18 (verse); 23.11, 13. On the correctness of the Masoretic pointing, see Perrin, 'Trois textes', p. 387 n.

purchase recorded in the Bible. The vendor, Naomi, does not appear to be present at all. There is no mention of the price, a point about which the biblical narratives are usually extremely particular.[1]

If, therefore, we take the verb in its natural meaning, and assume the action to be in the past, a clearer interpretation can be given. It must be remembered that the text before us is a narrative and not a legal tract. The biblical narrative is careful to include legal detail when it is a question of 'legitimacy'. If Abraham is to buy his wife an eternal resting place, no detail can be spared to show that the land is legitimately owned. But liberties may be taken with the law of birthright if the only purpose is to show up the different characters of Jacob and Esau. Where a fact is not in dispute, the details are chosen not to illustrate the law so much as the story itself or its characters. The key to this story is the position of Naomi (Ruth is perhaps more important, but she must be held out of sight for the climax). When was the land sold? Presumably at the only time when a man would part with his inheritance, when there was a famine in the land, and the family emigrated to Moab (Ruth 1.1). Who actually sold the land? If Naomi inherited the land from Elimelech, it would be somewhat strange that she sold it while in Moab. But it could well have been Elimelech himself. Naomi is the key to the present situation, the last link with the ancestral land. The narrator throughout the story emphasizes her role;[2] it would be tedious for him to explain the full details of the original sale. This argument is equally strong if Naomi has not the capacity to own land. As already remarked, if women could not own land, then the mistake would be obvious.[3] One way or the other, the land is no longer in the family. It is now to be bought back from the original purchaser. This transaction of redemption is not recorded because it is not essential to the narrative: it takes place off-stage, so to speak. The transaction which is recorded is not a sale, but a cession of rights from one redeemer to the next in line. The dénouement comes when Boaz reveals the existence of Ruth and

1. Gen. 23; 33.19; 2 Sam. 24.24 and 1 Chron. 21.25; 1 Kgs 16.24; Jer. 32.7-15.

2. Cf. 1.6-7, 19; 4.14.

3. It would be too speculative to assume that the statement that Naomi sold the land is some sort of legal fiction, but as a technique of narrative it is familiar practice. A recent biography of Golda Meir stated that when her husband decided to return to the United States, she divorced him rather than leave Israel. Of course, in strict law it was he who divorced her. Cf. also 1 Sam. 13.3-4.

declares her qualifications. She is 'the widow of the dead'.[1] At this point the kinsman, who was at first perfectly willing to buy for his own benefit, rapidly changes his mind. The effect of this climax depends on our understanding why purchase of the land involves the obligation to marry Ruth, and why the kinsman considers this obligation too burdensome. In our opinion, the situation before us is that with which we concluded our discussion of the levirate. There is no levirate obligation on the nearest relative because the family land has long since been alienated. If, however, he exercises his right of redemption, he restores the land to the family and thereby revives the possibility of 'raising up the name of the dead upon his inheritance'. Since he is the levir, this duty falls upon him as well. Boaz's *coup* is to remind the kinsman that exercise of the right of redemption triggers the duty of levirate marriage. Perhaps the kinsman was already aware of this. But up to v. 5 only Naomi was mentioned and Naomi is 'too old to have a husband'. It may be that redemption involved an obligation to support Naomi or even marry her. We know nothing of its subsidiary conditions. But the important point is that, Naomi being past the age of child-bearing, the land purchased would pass to the redeemer's sons as part of his inheritance.[2] The text succinctly describes the new situation (v. 5): 'The day you acquire[3] the field from the hand of Naomi [i.e. by taking advantage of the right of redemption that kinship to Naomi gives, rather than by an ordinary purchase] you also acquire Ruth the Moabitess, the widow of the dead, in order to restore the name of the dead on his inheritance'. The kinsman's new-found reluctance, then, is understandable. The levirate is a duty, but normally does not cost money. Redemption may also be regarded as a duty, but it is normally beneficial for the redeemer. A combination of the two, however, results in paying for land which will not become part of one's patrimony.

1. Note the conciseness of the narrative. The only 'dead' referred to in this scene was her father-in-law Elimelech. Here, then, is a further example of the narrative technique mentioned above. The narrator does not include tedious detail.

2. Compare the crime of Onan (Gen. 38.9). By performing the duty of levir in form but not in fact he hoped to gain for himself the inheritance of his brother (Thompson and Thompson, 'Legal Problems', p. 93).

3. The verb *qnh* does not necessarily mean to 'buy'. See our discussion on this point in Chapter 1, above.

4. *Transfer of Redemption Rights*

The final transaction between Boaz and the kinsman affords us an interesting glance at one of the subsidiary aspects of redemption: the transfer of rights from one redeemer to another. The kinsman cast off his right along with his shoe, and Boaz affirms his acquisition thereof by a formal declaration before witnesses at the city-gate. There is a slight analogy with the ceremony of Deut. 25.9: the removal of the shoe in that case could be said to be symbolic of release of control over the widow. But in the present case the levirate is clearly not at issue. The kinsman is avoiding putting himself in the position of being bound by that duty.[1] This ceremony also answers some of the questions that we raised earlier about the institution of redemption. Since a formal legal act was necessary to divest the kinsman of his right to redeem, it follows that a close relative, and, *a fortiori,* the original owner himself, could redeem the land from an earlier redeemer. A kinsman redeemed subject to the rights of closer relatives. Thus a relative could redeem over the head of the owner's infant son, but that son could subsequently buy back his father's land from his uncle or cousin. The important thing was that the land remain in the family. That once within the family circle, it should eventually return to the original owner or his descendants was perhaps considered desirable. But it was not inevitable.

1. We agree with Thompson and Thompson ('Legal Problems') that the levirate law of Deuteronomy cannot be taken to be exclusive or comprehensive. It may even be the application of an existing law to a special situation, *contra* Burrows, 'Marriage'. Further consideration of the intriguing problems of the biblical law of levirate must be left to a separate study.

Chapter 4

THE LAW OF THE BIBLICAL LEVIRATE

1. *Sources*

The levirate may be provisionally defined as the custom whereby, when a man dies childless, it falls upon one of his relatives to marry his widow. Apart from the biblical sources, its presence has been claimed in a number of laws of the ancient Near East, which we shall examine below.

The biblical levirate law is presented in Deut. 25.5 as follows:

> If brothers dwell together and one of them dies and has no son, the wife of the dead shall not be married outside the family to a stranger; her husband's brother shall go in to her, and take her as his wife, and perform the duty of a husband's brother to her. And the first son whom she bears shall succeed to the name of his brother who is dead, that his name may not be blotted out of Israel. And if the man does not wish to take his brother's wife, then his brother's wife shall go up to the gate to the elders, and say: 'My husband's brother refuses to perpetuate his brother's name in Israel; he will not perform the duty of a husband's brother to me'. Then the elders of his city shall call him, and speak to him: and if he persists, saying, 'I do not wish to take her' then his brother's wife shall go up to him in the presence of the elders, and pull his sandal off his foot, and spit in his face; and she shall answer and say, 'So shall it be done to the man who does not build up his brother's house'. And the name of his house shall be called in Israel, The house of him that had his sandal pulled off.

This is the only legislative text in the Bible on the institution, but it is also mentioned in two narratives. In ch. 38 of Genesis, Judah is tricked into performing the levirate with his twice-widowed daughter-in-law Tamar, after he has failed to give her as a wife to his third son, Shela. In ch. 4 of Ruth, Boaz marries Ruth, the widow of his relative Mahlon, after redeeming the latter's land. In both these narratives, as in the legislation, the stress is laid upon the union resulting in the birth

of a son, who is supposed in some way to represent the deceased.

The differences in detail between these three sources have led scholars to believe that they represent different regional customs or different stages of an historical development.[1] First, it has been noted that the story of Tamar presents the obligation of the levirate as much stricter than in the law of Deuteronomy, since the brother-in-law appears not to be able to decline the duty.[2] Further, the duty falls finally upon the father-in-law in Genesis, whereas there is no mention of the father-in-law in Deuteronomy. E. Neufeld concludes that the Deuteronomic law reformed the ancient Hebrew levirate marriage custom by strictly limiting the persons affected and by providing a means of escape from the obligation of the levirate marriage.[3] In Ruth, the fact that it is not the brother but a most distant relative who performs the duty produces similar comment.[4] For R. de Vaux, this indicates a period or a milieu in which the law of the levirate was a matter for the clan rather than for the family.[5] More particularly, M. Burrows suggests that the redeemer had many duties to the clan, such as redemption of land, blood-vengeance, and originally also the duty to support the widow of, and beget a child for, the deceased. These duties, which conflicted strongly with the individual's interest, were therefore eventually restricted to the brothers of the deceased. Consequently, the law in Ruth represents a transitional stage between redemption-marriage as an affair of the whole clan and levirate-marriage as an affair of the immediate family.[6] For P. Cruveilhier, on the other hand, the law in Ruth is an extension of the Deuteronomic law, based on the fact that the levirate included the duty to purchase

1. The conjecture made by S. Loewenstamm in *Encyclopedia Biblica*, III (Jerusalem, 1958), col. 446.

2. R. de Vaux, *Ancient Israel*, I (London, 1961, 2nd edn), p.37.

3. *Ancient Hebrew Marriage Laws* (London, 1944), pp. 23-55 (p.34). Also J. Mittelmann, *Der altisraelitische Levirat* (Leipzig, 1934), p.31.

4. See G. Driver and J. Miles, *The Assyrian Laws* (Oxford, 1935), pp. 240-50.

5. *Ancient Israel*, p.38.

6. 'The Marriage of Boaz and Ruth', *JBL* 59 (1940), pp. 445-54. See also H.H. Rowley, who points out, however, that these duties would normally first fall upon the brother anyway ('The Marriage of Ruth', in *The Servant of the Lord* [Oxford, 1965], pp. 171-94).

the deceased's property, and this was often too much of a burden for the brother-in-law to bear.[1]

Apart from points of detail, all these hypotheses suffer from the same methodological fault: they are arguments from silence. The differences which they consider significant are due to omission; they are not contradictions in the laws. The assumption is that Deuteronomy 25 contains a comprehensive account of the law of levirate. Thus any detail in the other sources which is not mentioned in Deuteronomy is in conflict with it. In terms of ancient Near Eastern law this is not a valid approach. In the first place, these laws are not, as modern laws are, a comprehensive statement of general principles. Ancient Near Eastern jurisprudence failed to develop the tools of legal logic necessary for the formulation of general principles, and consequently its 'law codes' are not codes at all, but seldom more than collections of decisions in individual cases which, of course, refer only to particular aspects of the legal institution involved. The laws in Deuteronomy are no exception to this rule, and it applies all the more so to law in the narratives, where the writer assumes knowledge of the law on the part of the reader and only concerns himself with some unusual, and for that reason interesting, application thereof.[2] We are, therefore, confronted with fragments, and often peripheral fragments at that, from which we have to piece together the central features of the legal institution from which they stem. We shall begin that task by investigating what the biblical institution by its manifold rules was intended to achieve.

2. *Purpose of the Institution*

The purpose of the biblical levirate has been the subject of great dispute among scholars. Neufeld sees the main purpose of the law in the protection and security of the childless widow. 'Mere bearing of children was not the object of the levirate; children were only the means of achieving protection of the widow in the same way as marriage

1. 'Le lévirat chez les hébreux et chez les assyriens', *RB* 34 (1925), pp. 524-46.

2. See further the discussion by T. and D. Thompson, 'Some Legal Problems in the Book of Ruth', *VT* 18 (1968), pp. 79-99, and, generally, B.S. Jackson, 'Principles and Cases: The Theft Laws of Hammurabi', in *Studies in Judaism in Late Antiquity*, X (Leiden: Brill, 1975), pp. 64-74.

with the deceased husband's brother is only a method for attaining the same end.'[1] But if this were its end, the law seems to achieve it in a remarkably roundabout way. The brother is obliged not only to marry the widow but also to beget a child and pay the expense of raising that child and supporting the widow until such time as the child will be able to support his mother. Why should the brother not simply be obliged to support the widow?[2] Moreover, the sources themselves seem to be unaware of this purpose. Tamar in Genesis 38 appears to be in no material distress. The widow in Deuteronomy 25 claims that her brother-in-law has failed to perpetuate his brother's name, not that he has failed to support her. She is even contemplated as being able to re-marry in the absence of the levirate, whereby she would solve any material problems. Support of the widow may well have been a motive behind the introduction or retention of the institution, but it is unlikely to have been the main purpose of the law.

Another theory is based upon P. Koschaker's claim that marriage in the ancient Near East was 'Kaufehe', a contract of purchase of a wife.[3] The wife was bought by her husband or father-in-law from the house of her father. After her husband's death his family had the right to keep her in the family so as to preserve their financial investment.[4] She is the property of that family and is inherited by the brother, who is the heir of the deceased if he dies without issue. But this would make the levirate a right, whereas in the biblical sources it is clearly presented as a duty, and an onerous one at that. Even if we regard the right as belonging to the family as a whole, and the brother's duty to preserve his family's right, it is hard to see why perpetuation of the deceased's name should be involved in what is a purely financial arrangement, or why the widow herself should be the instigator of performance of the duty, as is the case in Genesis and Deuteronomy.

1. *Marriage Laws*, p. 30.

2. Or her own father for that matter? Neufeld suggests that the widow returning home might receive a cool welcome. This might be so, but it is no reason for placing a legal obligation on her brother-in-law, who is unlikely to have warmer feelings towards her than her father.

3. 'Zum Levirat nach Hethitischem Recht', *RHA* 2 (1933), pp. 77-89.

4. C. Fensham, 'Widow, Orphan and Poor in Ancient Near Eastern Legal and Wisdom Literature', *JNES* 21 (1962), pp. 129-39. Neufeld (*Marriage Laws*) agrees with this view, and resolves the contradiction with his own hypothesis by suggesting that this was the 'original' nature of the levirate.

The same objections may be raised to G. Cardascia's view. Discussing what he regards as the same institution in Mesopotamia, Cardascia points out that the character of marriage in the ancient Near East is that of an alliance of two families, the purpose of which is lost if no offspring result therefrom. Accordingly, the levirate must be seen from the point of view of the father-in-law, who represents the family interest and who has acquired the wife for his son. If the first marriage fails in its purpose, he can transfer the widow to another of the sons in his power in order to achieve the desired effect.[1] This view may fit the story of Judah and Tamar, where fraternal duty could be regarded as the correlative of paternal right, but it does not accord so well with the Deuteronomic law, which does not mention the father-in-law at all, and even less so with the situation in Ruth, where the father-in-law and his sons are all dead. The father-in-law's material interest ends with his death, and whether some more ethereal interest of his family in the original alliance remained to be served is hard to say,[2] but it surely could not survive the extinction of his lineal descendants.

Nonetheless, Cardascia's emphasis on the production of offspring is apposite, for whatever the ultimate purpose of the levirate marriage, the biblical sources clearly regard this as its function. In Deuteronomy it is an express condition precedent that there shall have been no issue of the first marriage, and the same is implied in Genesis and Ruth. The person whose interest the sources regard as being served by the birth of a child is not the father-in-law, however, but the dead husband. Judah tells Onan to perform the levirate and 'raise up seed to your brother'.[3] Boaz marries Ruth 'to raise up the name of the dead [i.e. Mahlon]'[4] and Deuteronomy explains how this is achieved: 'the first-born son which she beareth shall succeed in the name of his brother which is dead, that his name be not put out of Israel'. A simple conclusion would be that it is the man's memory which is to be preserved and that the levirate achieves this purpose by attributing

1. 'L'adoption matrimoniale à Babylone et à Nuzi', *RHD* 37 (1959), pp. 1-16.

2. Discussing the Assyrian Laws, Cardascia admits that the father-in-law's right is extinguished with his death but argues that it survives for the benefit of the subsisting undivided family when his sons are still minors at his death (*Les lois assyriennes*, [Paris, 1969], p.66).

3. Gen. 38.8.

4. Ruth 4.10.

offspring to him. That such a conclusion is not justified is shown by the fact that in both the narratives, the offspring of the levirate union is subsequently referred to as the issue of the levir, Judah and Boaz respectively, and not of the deceased, Er and Mahlon.[1]

Moreover, the story in Ruth seems to place a further condition for performance of the levirate. The kinsman is not liable to the levirate *per se,* but only if he redeems the landed property of the deceased. The reason given by the kinsman for refusing to undertake the duty of levir shows us the point of this condition: the land for which he has paid will pass not to his children by his own wife but to the issue of the levirate union. Expressed in more general terms, then, the condition may be concluded to be that there must be land for the issue of the levirate to inherit.[2] If then we take the two conditions precedent thus posited as essential: that the deceased be childless and that there be land of his available (we shall consider the meaning of this term more closely below) for the issue of the levirate, we may by a simple process of inversion deduce that the main purpose of the levirate was to provide the deceased with a successor to his estate.[3]

Our conclusion warrants a closer look at the wording of those clauses in the sources cited above which purport to express the purpose of the levirate. In Deuteronomy, a literal rendering is that the first-born shall 'stand up upon the name'[4] of the deceased brother, so that his name be not blotted out of Israel.[5] In Ruth, Boaz marries Ruth 'to raise up the name of the dead *upon his inheritance*, that the name of the dead be not cut off from among his brethren, and from the *gate of his place*'.[6] As we have already remarked, in the genealogies of

1. Gen. 46.12 and Ruth 4.21.

2. In the case of Ruth, where the land had already been alienated, redemption of it 'triggers' the levirate duty. We have already argued this point more fully in our discussion of the Book of Ruth in Chapter 3. H. Brichto appears to have reached the same conclusion independently in 'Kin, Cult, Land and Afterlife—A Biblical Complex', *HUCA* 44 (1973), pp. 1-54 (pp. 15-18). Cf. also Neufeld, *Marriage Laws*, pp. 45-46.

3. Many scholars have regarded this as a subsidiary purpose, e.g., Driver and Miles, *Assyrian Laws*, pp. 243-45.

4. Driver, *Deuteronomy* (ICC; Edinburgh: T. & T. Clark, 1896), p. 283. Hebrew: *yaqûm 'al šem 'aḥîw hammet.*

5. Deut. 25.6. Cf. v. 7.

6. Ruth 4.10. Cf. v. 5 'upon his inheritance'.

Genesis and Ruth the offspring appears not to take the name of the deceased, but that of his natural father, the levir. We are therefore justified in seeking for this context a meaning of the word 'name' other than its literal one. It should be remembered that a legal term is not necessarily an independent word; more often it is a secondary meaning of a word in common use. This legal meaning may be obviously derived from the general meaning of the word, but it may also appear to have no relation to it, or even to become its antithesis.[1] The word 'name' is also used in connection with land in the case of the daughters of Zelophehad. Their father has died without sons, and they complain: 'Why should the name of our father be taken away from his family because he had no son? Give to us a possession among our father's brothers' (Num. 27.4). Apparently, therefore, it was a man's landed estate which gave him his 'name'. Neufeld considers that in this text 'name' actually means a man's property.[2] Perhaps a sense closer to the meaning in this context is given by the English legal term 'title', which refers not to the property itself but to a man's right to a particular piece of landed property. At the time of his death, Zelophehad had not yet acquired his estate, the Israelites still being in the desert, so that, strictly speaking, he could not have it taken away from him. All he could lose would be the right to acquire, the title.[3] Thus in Deut. 25.7 the levir refuses to establish his deceased brother's title to his inheritance, whereby the issue of the levirate would succeed to the dead brother's title and the deceased's title would thus avoid

1. Compare English legal terms like 'assault', which means a mere threat, and the very word 'title', whose legal meaning is not at all its literary one. Thompson and Thompson ('Legal Problems', pp. 84ff.) and M. Burrows ('The Ancient Oriental Background of Hebrew Levirate Marriage', *BASOR* 77 [1940], pp. 2-16 [p. 2]) attribute a wide range of meanings to the word 'name' as used here. This is unnecessary. A legal term may have several meanings, but usually has only one in any single context. Otherwise the clarity necessary to laws would be entirely lost.

2. *Marriage Laws*, p. 47.

3. The word *šem is* used in the same way in Ezek. 48, which begins 'Now these are the names of the tribes. . . ', and goes on to delineate the portions of land to be allotted to each. It should be noted that in both Rome and Mesopotamia land was identified by the name of its owner, and its situation established by reference to the names of the owners of neighbouring estates. See D. Daube, 'Three Notes on Digest 18.1', *Law Quarterly Review* 73 (1907), pp. 397ff. for Roman Law, and M. Schorr, *Urkunden des altbabylonischen Ziril und Prozessrechts* (VAB, 5; Leipzig, 1913), nos. 89ff. *passim*, for examples of the standard Old Babylonian practice.

extinction. In Ruth, it is stated more specifically that the purpose of the levirate is to establish the title (Heb. *šm*) to his inheritance (*nḥltw*).[1] Only in Genesis is no specific reference to the inheritance made. The first step alone is mentioned, that of raising up seed for the deceased.

To understand how the law in the Genesis narrative fits into the above schema, we must consider the context of the levirate obligation. If a man died without issue, his inheritance would pass to a member of the collateral line of his family, the closest being his brother. But if the brother performed the levirate, the inheritance would return to the line of the deceased, to which the issue of the levirate fictionally belonged. This is the legal fiction of the levirate. It is clear, therefore, that the levirate is a great sacrifice on the part of the brother, for he might just let the deceased remain without issue and take over the inheritance for himself and his progeny.[2] In this context the reluctance of the levir contemplated in Deuteronomy and the reluctance of Onan in Genesis are understandable. But in the Genesis narrative, had Onan refused outright, he would have gained nothing, since either his father or younger brother could perform the levirate instead and provide an heir for the deceased's share.[3] Onan, therefore, thought of a trick. He ostensibly undertook the responsibility given to him, but took care that no heir could possibly result from the union. By performing the duty in form but not in fact he hoped to gain for himself his dead brother's inheritance.[4] Property was thus the background to this narrative as well.

In summary, we are of the opinion that all three biblical sources reflect an institution with a single legal object: to prevent extinction of

1. Verses 5 and 10.

2. Pedersen, *Ancient Israel*, p. 91. Cruveilhier ('Le lévirat', p. 531) sees that in Ruth the redeemer must buy the deceased's estate in order to raise up his name by the levirate, but fails to realize that in the other two cases the brother is already heir to the property, and so wrongly assumes that every levir also has the duty of redeeming property.

3. The question whether he could have refused, i.e., whether the law here is stricter than the law in Deuteronomy, is therefore irrelevant.

4. Thompson and Thompson, 'Legal Problems', pp. 93-94. Brichto ('Kin, Cult, Land', p. 16) points out further that as first-born, Er was entitled to a double share, as would be his fictional son, so that Onan by his subterfuge stood to gain even more.

the deceased's title to his landed inheritance. We shall now consider how the rules of the institution vary with the different circumstances to which it applies.

3. *Range of the Institution*

The key to understanding the varied circumstances under which the institution operated is the much-disputed phrase in Deuteronomy 'when brothers dwell together'. The Talmud interprets it as brothers living contemporaneously, excluding one born after the death of the deceased.[1] It is, however, a more sophisticated jurisprudence than that of the Deuteronomic laws that is capable of compressing such a notion into the Hebrew phrase, which in the Bible at least has a spatial, rather than a temporal meaning.[2]

Koschaker claims that the phrase reflects the origins of the levirate in fratriarchate, a situation where the brothers indeed do dwell together.[3] But this would make the Deuteronomic law earlier than the law in the Genesis narrative, which already reflects an uncompromisingly patriarchal society. Now it is perfectly possible that a law code may contain laws considerably older than the code itself, but to suggest that the late monarchical Deuteronomic code could contain a law which had already been superseded in patriarchal times is stretching that possibility to the utmost. The only way it could occur is, as Driver and Miles suggest, if the writer was copying old material and he retained these words.[4] But then the actual phrase 'when brothers dwell together' cannot go back to the days of a fratriarchate, or, as Driver and Miles suggest, of communal property, since it assumes the possibility of brothers dwelling apart, which by this argument is only a later development. We could assume that it came from a mixed fratriarchal–patriarchal period, but in view of the incompatibility of the two systems it is hard to suppose that such a period existed, at any rate in ancient Israel.

1. *Yeb.* 17b. But also, interestingly enough, only such brothers who are united in the rights of inheritance, excluding brothers from the mother's side.

2. Gen. 13.6; 36.7.

3. 'Fratriarchat, Hausgemeinschaft, und Mutterrecht in Keilschriftrechten', *ZA* 41 (1933), pp. 76-80.

4. *Assyrian Laws*, p. 243. They would probably be interpreted differently from their original meaning by later generations, of course.

A far more satisfactory explanation in my opinion is that given by Daube, that the phrase refers to the period after the father's death when his sons have not yet taken each his share of the inheritance but continue to live together on the undivided estate.[1] Daube compares it with the situation that existed in early Roman law and which is succinctly described by Gaius: 'But there is another kind of partnership peculiar to Roman citizens. For at one time, when a paterfamilias died, there was between his *sui heredes* a certain partnership at once of positive and natural law, which was called *ercto non cito*, meaning undivided ownership...'[2] In fact, there is no need to go as far afield as Roman law to find parallels, for Mesopotamian law also recognizes the special legal position of sons prior to their division of the inheritance. Section 25 of tablet A of the Middle Assyrian Laws (MAL) talks of brothers who have not yet made a division (*ahhū lā zīzūtu*); secs. 15-16 of Codex Eshnunna (CE) speak of the 'son of a man who is not yet divided' (*mār awīlım lā zīzu*)[3]; and CH 165 states most specifically of all: 'after the father dies, when the brothers divide'.[4] Even the Talmud, which interprets the biblical phrase differently, may have known this arrangement. It distinguishes between brothers who have divided (*aḥim še-ḥilqu*) and brothers as partners (*aḥim šutafim*).[5]

This interpretation explains why there is no mention of the father in the Deuteronomic law. In the situation described there, he is already dead. The three sources, then, depict three different stages at which the levirate operates: when the father is alive and the brothers are still living in his house; immediately after his death, when the brothers, by not dividing the inheritance, maintain the same situation as if the

1. '*Consortium* in Roman and Hebrew Law', *The Juridical Review* 62 (1950), pp. 71-91. See also A. Puuko, 'Die Leviratsehe in den Altorientalischen Gesetzen', *ArOr* 17/2 (1949), pp. 296-99.

2. *Institutes of Gaius* (ed. F. de Zulueta; Oxford, 1946), 3.154a.

3. See Yaron, *Laws of Eshnunna*, pp. 99-100. For the Old Babylonian practice in general use see F. Kraus, *Königs Ammi-Ṣaduqa*, pp. 1-17.

4. *Idem*, secs 166.167. There may be a biblical reference to division of the inheritance in the terms *goral* and *ḥevel* when used of division of land (e.g. Mic. 2.5): Loewenstamm, *Encyclopedia Biblica*, V, col. 633.

5. *T.B. Beiṣa* 37b, *B.Qam.* 69b, *Ḥul* 25b. Noted by E. Jacob, 'Die altassyrischen Gesetze und ihr Verhältnis zu den Gesetzen des Pentateuch', *Zeitschrift für vergleichende Rechtswissenschaft* 41 (1925), pp. 340-52 [p. 351].

father were alive; and where the land has been alienated, but the nearest relative (who would theoretically be the deceased's brother if he died without issue) buys it back.

What, then, is the factor linking these three situations? In other words, why is the fourth possible situation, where the brothers *have* divided the inheritance, not included? The answer hinges once again on the significance of the phrase 'when brothers dwell together'. If, as some scholars think, it merely describes the typical situation in which the law operates, and is not exclusive,[1] then the levirate will operate in all four situations, and the sources happen to give examples only of three. In view of what we have seen about the nature of ancient Near Eastern law this is quite possible; but it empties the phrase of all content. We suggest the following hypothesis. In Genesis, since the brothers are still dwelling in their father's house, it is the father who owns the estate. Thus Onan (and Shelah) upon their father's death would receive their dead brother Er's share of the property *not as his heir*, but directly from their father Judah. Er has never actually owned the property and therefore drops entirely out of the picture. The situation in Deuteronomy is the same. If one of the brothers dwelling together dies, the surviving brother is not heir to the dead one. It is a feature of such partnerships (i.e. common ownership) that each partner theoretically owns the whole. Thus the surviving brother 'was owner of all the property even while his brother was alive, and now, on the latter's death, he just goes on being owner. He is now, of course, free of certain limitations that existed while his partner was alive, but this freedom is not acquired by way of succession.'[2] Again, the brother drops out of the picture. In Ruth, the narrator is also careful to mention that the land belonged to Elimelech.[3] Elimelech (or his wife Naomi for him[4]) sold the land and went to Moab with his two sons.

1. 'When Deuteronomy speaks of brothers living together, it is not specifiying the limits under which the law is binding. It is describing the typical situation under which the law would normally be used' (Thompson and Thompson, 'Legal Problems', p. 90). Cf. Mittelman, *Der altisraelische Levirat*, p. 31.

2. Daube, '*Consortium*, p. 76.

3. Cap. 4.3.

4. See our analysis of the sale and redemption, Chapter 3 above. We take the opportunity to correct an error committed by us in that article, in common with many other scholars (see most recently D. Beattie, 'The Book of Ruth as Evidence for Israelite Legal Practice', *VT* 24 [1974], pp. 251-67). There is no point in

All three died in Moab. Thus the two sons, Mahlon and Chilion, never came to own the family property at all. The redeemer of the land would receive his right to purchase from Elimelech, and the two sons would again drop out of the picture.

In the fourth case, however, where the brothers have divided the property, if one of them dies without issue, then the surviving brother inherits *as heir of the deceased*. If we look at it from the point of view of the *šm*, the 'title', a putative title-deed of the family estate in the first three cases would not list the name of the deceased as a former owner, but in the fourth case it would. Only in the first three cases, therefore, is the levirate necessary, to establish the deceased's title by a legal fiction, so that his title 'be not extinguished from Israel'.[1] The reasons why the fictional maintenance of a separate title was considered so important are beyond the scope of a legal discussion, but just how important it was considered is shown by the plea of the daughters of Zelophehad.[2]

4. *Details of the Law*

Deut. 25.5 uses the same root, *ybm*, for brother-in-law (sc. sister-in-law) and for performance of the levirate. For this reason the verbal form is often translated 'to do a brother-in-law's duty', i.e., deriving the verb from the noun.[3] On the basis of a Ugaritic parallel other scholars have sought to give the noun levir (*yābām*) the meaning 'progenitor' and to say that the word came to mean brother-in-law because this was the party usually involved in the custom of *yibbum*,

discussing, as we did, whether Naomi could have owned the land or not, as it states plainly in v. 3 that Elimelech owned the land and Naomi merely sold it. If a woman did not have capacity to own land, it does not mean that she could not act as agent for her husband to acquire (or alienate) on his behalf: cf. Prov. 31.16. This was the position of slaves, wives in *manu* and children in *potestate* in Roman law; see W.W. Buckland, *Textbook of Roman Law* (3rd edn; Cambridge, 1963), pp. 278-81.

1. Note that Boaz does not raise up Elimelech's name, since it is not necessary, only Mahlon's. The unfortunate Chilion, whose wife Orpah went back to Moab, does have his name extinguished, even though Boaz might acquire his share of the family estate.

2. The theological importance of keeping ancestral property in the correct descendant line has been fully discussed by Brichto ('Kin, Cult, Land').

3. See, e.g., BDB *ad. loc.*

i.e., procreation.[1] If this were the case, however, we would expect the object of the verb *ybm* to be the offspring and not, as in Deuteronomy and Genesis, the widow. Nonetheless, the fact that there is a special word for performance of the levirate by the brother-in-law and none in the case of the father-in-law or more distant relative should not trouble us unduly. It merely reflects the fact that the brother-in-law was the primary person upon whom the duty of the levirate fell, being, after all, the closest agnate. The father-in-law would perform the levirate only exceptionally in the absence of brothers of the deceased. Section 193 of the Hittite Laws shows an analogous hierarchy: 'If a man has a wife and then the man dies, his brother shall take his wife, then his father shall take her. If in turn also his father dies, *et cetera*' *A fortiori* a more distant relative as in the case of Ruth.

Another point which arises on the question of hierarchy is the order in which the duty falls if there is more than one brother. From the Genesis narrative and from common sense one would assume it to be from the eldest downwards. In the levirate the order is not so very important, since it is a duty not very onerous in itself. Its performance by any one brother will in any case deprive all of their share of the deceased's inheritance. In redemption on the other hand, as the Ruth narrative shows, the order is very important, since it is a right, and a formal ceremony is needed to cede one's place in the line, which presumably applied between brothers as well.

Deut. 25.5 also states that the levirate is to be performed when the brother who dies has no *bn*. This normally means 'son', but the Septuagint translates σπέρμα, 'seed'. The question therefore arises whether daughters too were included in the condition. According to Neufeld, in early times, when the son alone took the inheritance, the existence of a daughter was ignored and did not affect the obligations of the levirate. Later, when daughters too became heirs, the levirate became obligatory only if children of neither sex existed.[2] Loewenstamm, on the other hand, considers that offspring of either sex is meant, and points out that the word *bn* in several places in the Bible

1. E.g. Thompson and Thompson, 'Legal Problems', pp. 84-85. Both in Deuteronomy and Genesis, however, the direct object of the verb *ybm* is the widow and not the offspring, as it should be if the verb were to mean 'to procreate'.

2. *Marriage Laws*, p. 45.

can mean merely 'child' (e.g. Gen. 3.16). There is even the phrase *bn zkr*, a 'male son' (Jer. 20.15).[1] The term used for the issue of the levirate in Deut. 25.6 should be conclusive, since it is supposed to replace the missing offspring. The term is *bkwr* meaning 'first-born', but the Septuagint translates differently: παιδίον meaning 'little child'. So far is this from the Hebrew, not even expressing the element of primogeniture (even conceding that the first-born could be a girl) that it is an obvious sign of an attempt to alter the meaning of the law. We therefore consider, with Neufeld, that the most likely hypothesis is that until late biblical times at least, the existence of a daughter did not affect the imposition of the levirate, nor was the birth of a daughter considered fulfilment of the duty.

While a first-born son was necessary for fulfilment of the levirate, were subsequent sons also considered as raising up the name of the dead? Although the sources were silent on this point, in our opinion they most probably did, and all the sons of the levirate union shared in the inheritance of the deceased. If the levir wanted heirs of his own, he would take another wife. Both the law and the narratives are concerned only with the necessary minimum, not the further possibilities. We should note in passing the interesting point that Tamar conveniently has twins, one for the 'name' of each dead brother.

We now turn to the ceremony with which the law in Deuteronomy concludes (vv. 7–10). It is unusual in that the sanction involved is mere humiliation and not physical coercion, and its ineffectiveness is, therefore, foreseen. In the circumstances, however, this is understandable. First, the levirate involves a positive duty, and the law is notoriously shy of enforcing such duties. Secondly, it is a family matter, not a public duty. The interest is really the father's, and had he been alive he would presumably have exercised his authority. But the situation in Deuteronomy is that the father is dead, and there is no one to exercise authority over the surviving brother, who is subordinate only to his own conscience and to family pride. Intervention of the public authorities in such a case is less appropriate by the sanctions of the criminal law than by public humiliation.[2]

1. *Encyclopedia Biblica*, col. 445.

2. Daube ('*Consortium*') adduces the parallel of Roman law, where a man who behaved immorally was punished by the Censors with infamy. J. Morgenstern ('The Book of the Covenant II', *HUCA* 7 [1930], pp. 19-258 [p. 169]), makes the point

The actual drawing-off of the sandal is often compared to the kinsman's removal of his sandal in Ruth. Just as the kinsman there was conceding a right, so the brother here is losing one,[1] and since it is the widow in Deuteronomy who draws off the sandal, Morgenstern concludes that she is by this act acquiring her freedom,[2] while Thompson and Thompson go further to suggest that she gains her dead husband's estate thereby.[3] In our opinion it is a primitive outlook to consider that simply because two ceremonies have a material connection, their legal meaning is necessarily the same. The ceremony in Ruth represents concession of a right; in Deuteronomy it represents failure to perform a duty. The two concepts are diametrically opposed.[4] It is not beyond human imagination to conceive that the drawing-off of a shoe may have a different significance in different contexts. In any case there is a world of difference between removing a garment oneself and having it taken off one. If Morgenstern's and the Thompsons' suggestions are considered independently from their connection with Ruth, then there arise also other grounds for their rejection. As against the Thompsons' hypothesis, there is no evidence in the Bible of a widow inheriting land; indeed, all indications are to the contrary. The case of Zelophehad, which concedes the right of inheritance to daughters, makes no mention of the widow in its list of heirs.[5] To assume that right here would be to reverse the roles of the parties. The widow would be more eager to avoid the levirate, while the brother would be more eager to perform it: yet it is the widow who disgraces her brother-in-law in the ceremony. Morgenstern's suggestion that she thereby receives her personal freedom receives no

that the shame is to attach the man's 'house' and not to him alone. One might see this as a taint on the title to the land which he acquired for his own line by failing to perform his brotherly duty. And cf. A. Phillips, 'Some Aspects of Family Law in Pre-Exilic Israel', *VT* 23 (1973), pp. 359-61.

1. Mittelman, *Der altisraelitische Levirat*, p. 32. Followed by Brichto (without citation), 'Kin, Cult, Land', p. 19.

2. 'Covenant, II'.

3. 'Legal Problems', p. 93.

4. The author of Ruth 4.7 at least was aware of the tension between the two cases, and felt the need to explain the difference historically. Without wishing to enter into the controversy on the date of this verse, the vagueness of the explanation suggests to us at least that it is a gloss.

5. Num. 27.8-11.

mention in the text, which indeed ends with a statement of the brother's status, not of the widow's. It might be a subsidiary effect of the brother's public refusal that the widow gains her freedom, but it is difficult to see this as the purpose of the ceremony. First, once we dismiss the ceremony in Ruth from our minds, and see the actions in the Deuteronomic ceremony as humiliating, then it seems too roundabout a way to make a declaration of one's freedom. Secondly, to use comparative jurisprudence, freedom is normally acquired as the result of the declaration of the master or as the objective consequence of an act of his, for example, maltreating the subject person or, as in this case, refusing to perform the duty for which end the widow's dependence is continued. It would be highly unusual for the subject person to be able to gain his independence by his own ceremonial act or declaration.

To explain why it is the widow who initiates proceedings against her brother, we suggest an analogy with the situation of Tamar and Onan. The widow is still living in her brother's house, he may even have undergone a ceremony of marriage with her, but refuses to consummate. A further possibility, that will make our argument all the more persuasive, is that the marriage was by consummation. The triplet in Deuteronomy '(he) shall go in to her and take her to him to wife, and perform the duty of a husband's brother to her' seems to suggest this. The second act is the legal consequence of the first (there would hardly be a wedding ceremony *after* consummation) and the third verb is superfluous unless it summarizes the first two. There is thus only one physical act, but with two legal consequences. In all these circumstances, the only person to know of the avoidance of the duty would be the widow herself, so that she is the obvious person to initiate proceedings. Moreover, it is in her interest to do so, either because she wishes to be free from the union (although the Deuteronomist does not seem to contemplate this motive), or because (as seems more likely) otherwise she might bear the stigma of barrenness.

It has been questioned whether the duty of the levir was actually to marry his brother-in-law's widow, or merely to cohabit with her sufficiently for the production of an heir. Distinction has been made between the sources on this basis. S. Belkin distinguishes between

Genesis, where there is no marriage, and the post-Sinaitic law;[1] Driver and Miles distinguish between Ruth, where there is marriage, and the other two sources.[2] But in all three sources the terminology of marriage is expressly used. In Gen. 38.14 Tamar sees that she was not 'given as a wife' to Shelah (*ntnh lw l'šh*), in Deut. 25.5 the levir must take his sister-in-law to him 'as a wife' (*wlqhh lw l'šh*), and in Ruth 4.10 Boaz acquires Ruth 'as a wife' (*qnyty...l'šh*). The only doubtful case is Judah.

It should be remembered that the marriage of a widow in the ancient Near East was an informal affair. She merely 'enters the house' of her new husband[3] and in MAL A sec. 35 is even contemplated as having the groom enter her house.[4] If we return to our earlier suggestion that in the case of the levirate, marriage was by consummation,[5] then it is quite possible for Judah to have been considered to be married to Tamar, even though it was achieved by a trick. Judah does lack any *animus coniugendi,* at least at the time of the consummation, but the same could be said for Jacob when he was tricked into marrying Leah instead of Rachel. Again, the narrative states that once Judah realized what Tamar had done, he did not have intercourse with her again.[6] That could mean that he was entitled to and chose not to do so. There is also no suggestion that Tamar subsequently married a third person, or even Shelah.[7] The question whether Tamar's unorthodox procedure was regarded as marriage must, therefore, remain open.

The law of levirate appears to conflict with Lev. 18.16 and 20.21, which forbid a man to take his brother's wife. One means of rec-

1. 'Levirate and Agnate Marriage in Rabbinic and Cognate Literature', *JQR* 60 (1969), pp. 277-80.

2. *Assyrian Laws*, pp. 243-45.

3. CH 177; MAL A 35.

4. In MAL A 30, where the marriage of a widow to her brother-in-law is discussed, she is said to be given *ana ahūzete* instead of the normal *ana aššati*. The former term certainly means 'in marriage'—it is an abstract noun of the verb 'to marry'. But as Cardascia points out, it is used in cases where the usual formalities are lacking (*Lois assyriennes*, sec. 30, commentary *ad loc*).

5. Which was the view of the Talmud (*b. Qid.* 13b).

6. Gen. 38.26.

7. Shelah is placed alongside Tamar's sons in the genealogies, Gen. 46.12 and Num. 26.20 and his own list of descendants is given separately (1 Chron. 4.21).

onciling these texts with Deuteronomy is a presumption that the Levitical rule applies only during the brother's lifetime, as in Lev. 18.18, where the prohibition against marriage with the sister of one's wife only applies during the wife's lifetime. A similar distinction is found in Hittite law. HL 193 states: 'If a man has a wife and then the man dies, his brother shall take his wife, etc...There shall be no punishment.' HL 195 states: 'If however a man sleeps with the wife of his brother while his brother is living, it is a capital crime...'[1] Another suggestion is that the law of Leviticus represents the general rule, while the law of Deuteronomy and Genesis is *lex specialis*. If our hypothesis that the levirate does not apply when brothers have divided the inheritance is correct, it serves to strengthen this view. We have noted that only in the case of the father-in-law, Judah, does any question of uneasiness about the relationship arise, when it is stated in v. 26 that he did not have intercourse with Tamar again.[2] J. Emerton suggests that this is because Tamar was considered as already betrothed to Shelah.[3] We may compare CH 156, where if a father sleeps with the girl that he has betrothed to his son, it is not regarded as a sin as long as the son has not yet consummated the marriage, but he must nonetheless give the girl her freedom and pay her compensation. Finally, since the Levitical prohibition is part of the Priestly Code, which makes no mention of the levirate, the possibility cannot be excluded that priestly circles were seeking to abolish the levirate.[4]

1. Koschaker considered this last sentence an interpolation into the criminal law, thus showing the same tension between incest and levirate as in Hebrew law ('Zum Levirat', p. 79). His analysis has been vindicated by the identification of an earlier version omitting this last sentence: H. Güterbock, Review of Friedrich, *Die Hethitischen Gesetze*, *JCS* 15 (1961), pp. 64 and 72.

2. Sections 60-63 of the Laws of Manu allow a father-in-law to cohabit with his daughter-in-law solely for the purpose of begetting one son, after which it is forbidden. Thompson and Thompson ('Legal Problems', p. 95) argue on this basis that the levirate was not considered a normal marriage, but the Laws of Manu are a little too far afield to provide such evidence for the biblical law. The Hittite Laws contemplated marriage in spite of their concern over the question of incest.

3. 'Some Problems in Genesis XXXVIII', *VT* 25 (1975), pp. 357-60.

4. As Neufeld noted (*Marriage Laws*, p. 46) the high priest was practically excluded from the levirate, being forbidden to marry a widow: Lev. 21.14.

5. *Comparative Material*

We have postponed until now a full discussion of comparative laws from the ancient Near East, since it is still disputed whether the levirate is represented in them at all. From our point of view the dispute is not altogether relevant. The laws in question do discuss marriage of a brother to his widowed sister-in-law. Whether this is a levirate-marriage or not depends upon one's definition of levirate. If it is defined to include the condition that the widow be childless, for example, then we may have to exclude both the Assyrian and Hittite laws from the definition. For our purposes, however, it is not necessary at all to establish identity between the laws. If law A and law B have one central feature in common, the question is whether other features of law A can be adduced to fill in gaps in our knowledge of those same aspects of law B. In the light of the earlier discussion of the nature of ancient Near Eastern laws, it should be clear that arguments from silence are of no value in comparing these laws with the biblical laws.[1] If they do not show direct parallels, it is partly because they are dealing with specific problems of a very broad institution in areas thereof which are not those touched upon by the biblical laws. This fact, indeed, should lead to greater caution in claiming parallels, but at least one can use the comparative material when it serves to confirm an impression independently gained from the biblical sources. Thus we have seen that the Hittite laws have the same devolution along the line of agnates from brother-in-law to father-in-law as Genesis 38, which shows us that the case of Judah was not an unprecedented deviation from the normal law. Again, Hittite law shows the same tension between incest and levirate, and makes a distinction between a brother's wife and widow, which internal evidence had already suggested to be the resolution of the contradiction between the Levitical and the Deuteronomic law. On the other hand, an over-hasty assumption of identity with comparative material can lead to an unwarranted insertion of detail into the biblical law. It is reasonable to suppose after all that the biblical institution adapted a common custom to its own purposes, made its own conditions, and answered problems of application as they arose in its own way.

1. See, particularly, P. Cruveilhier, 'Le lévirat chez les hebreux et chez les assyriens', *RB* 34 (1925), *passim*, and Driver and Miles, *Assyrian Laws*, p. 248.

Tablet A of the Middle Assyrian Laws contains three sections which could possibly reflect a custom of levirate. Section 30 discusses levirate only incidentally; it is concerned with what happens to a contract of betrothal when the fiancé's brother dies and he marries the dead brother's widow. Being a mere reference, it does not provide the details which could be of value for comparison, but it does call the union between brother-in-law and sister-in-law *ana ahūzete*, a technical term for marriage without formalities, generally a second marriage. The fact that such a union was regarded as marriage, albeit somewhat different from ordinary marriage, is a pointer to the nature of the 'marriage' of the levir in biblical law. Section 33 is too fragmentary to be of much assistance: it has only been reconstructed by analogy with the biblical law and is therefore for the most part invalid as a source of comparison. The extant text, however, has one useful piece of information. It mentions the possibility of a widow marrying her father-in-law, the significance of which we have already seen.[1]

Section 43 discusses a number of possible situations. If a father has acquired a fiancée for one of his sons and (1) that son dies or disappears (before the wedding), the father may marry her to another of his sons. (2) If father and son have both died, but the son has a son (presumably from another marriage) that son shall/may marry her. (3) In both cases, there is a minimum age limit of ten for the potential husband. It would be abuse of comparative method to suggest that any of these rules should be applied to the biblical institution without further evidence. The first two situations receive no mention in the Bible, unlike the situations regulated by the previous rules. And unlike the latter also, they show affinities to institutions other than the levirate, so that they may be derived by analogy from these rather than a levirate situation. The first case, involving betrothal, reminds one more of the common ancient Near Eastern institution of matrimonial adoption (which may also exist in the Bible).[2] The second, of marriage of a widow to the sons of another of her

1. It is probable that this union was also called *ana ahūzete;* see the reconstruction of Driver and Miles, *Assyrian Laws* (text), col. iv 1.66.

2. Exod. 21.7ff. Cardascia, however, considers that matrimonial adoption and the levirate cannot co-exist in the same legal system ('Adoption matrimoniale et lévirat dans le droit d'Ugarit', *RA* 64 [1970], pp. 119-21).

husband's wives, echoes a custom well known in Assyria but not attested in the Bible.[1] The third rule cannot be transferred to the Bible, in spite of what is written about Shelah, since the legal age of puberty will inevitably vary from legal system to legal system.

A final source of comparison which has been adduced is document no. 16144 from Ugarit.[2] This is a curse by King Arihalbu (who was childless) against anyone who, after his death, should take away his widow from his brother. Even if this does show the existence of the levirate at Ugarit (it has been argued that it relates to succession to the throne only), it tells us nothing of its content. It is therefore of little comparative value.

1. See MAL A 46. Cardascia's suggestion in *Les lois assyriennes* (sec. 43 commentary *ad loc.*) that the grandson appears because an intervening division of the inheritance has extinguished the brother's rights is attractive, but the situation is simply too extraordinary for there to be deduced from it a rule common to several societies.

2. For edition and discussion see: Boyer's commentary *ad loc.* in PRU III; M. Tsevat, 'Marriage and Monarchical Legitimacy in Israel', *JSS* 3 (1958), pp. 237-43; and Cardascia, 'Adoption matrimoniale'.

Chapter 5

THE PRICE FACTOR IN THE REDEMPTION OF LAND

1. *Introduction*

Redemption of land is the subject of detailed legal provisions in the Bible, but it is also attested in many other legal systems of the ancient Near East. The purpose of this essay is to examine a particular problem occasioned by the existence of such a right in these systems.

When land is sold in the normal course of trading, buyer and seller arrive at a price through a process of bargaining in which the most important factor is the law of supply and demand. Redemption, however, is an artificial transaction, a compulsory purchase in which the seller cannot exercise his ultimate bargaining counter of withdrawal from the negotiations. The task of determining the price must therefore fall not upon the parties but upon that same law which granted the right of redemption.

Upon what criterion, then, does the law of redemption fix the price? It is this question which our study seeks to answer.

2. *Biblical and Post-biblical Sources*

The right of a seller or his heirs[1] to redeem ancestral land is set out in detail in ch. 25 of Leviticus. Various types of land are considered: agricultural land, urban houses, land belonging to Levites,[2] but on the question of price, the law is remarkably reticent.[3] Lev. 26.27 speaks of the redeemer paying the 'balance' ('*dp*), but this relates only to the

1. This term is used advisedly. Persons other than the seller who are entitled to redeem this land are all relatives who stand in the line of succession. Cf. Jer. 32.8.

2. Verses 23-27, 29-34.

3. The general aspects of the biblical law of redemption of land were dealt with in Chapter 3.

residue of years to the Jubilee; it is not explained what price is used as the basis for calculating the balance payable. The two narrative sources that touch upon redemption of land are no more forthcoming. In Jeremiah 32, the prophet exercises what is referred to as a right of redemption (*mšpṭ hg'lh*) in buying a field from his cousin. The exact price paid—17 shekels—is recorded, but no mention is made of how this figure is arrived at. Nor is there any indication as to whether this was a high or a low price, a fair market price, or other. In the second narrative in Ruth 4, the kinsman is informed by Boaz of his right to redeem a field and agrees to purchase without even inquiring as to the price.

The only express mention of a relative price for redemption of land comes in a passage far removed from the sphere of sale. Lev. 27.14-15 reads:

> When a man dedicates his house to be holy to the Lord, the priest shall value it as either good or bad; as the priest values it, so it shall stand. And if he who dedicates it wishes to redeem his house, he shall add a fifth of the valuation in money to it, and it shall be his.

A similar provision applies to farmland, with due allowance for the proximity of the Jubilee (vv. 16-24). If this system is based on the analogy of redemption of land sold, then the priest's valuation (again, the criterion therefor is not stated) would represent the original selling price, and we could conclude that redemption was set in general practice at a fifth above the original price. The one-fifth rule, however, is not a feature drawn from the general law of redemption but rather from the system of penalties applied by the priests, as can be seen from the rules applying to guilt offerings in Lev. 5.15-16 and 21-24.

A further conclusion could therefore be drawn, namely that the price of redemption in general practice was the original selling price as such, that is, shorn of the priestly feature of an added one-fifth. Such a conclusion, however, being based upon an extended chain of presumptions, is untenable without other evidence.

Mishnaic law can often be relied upon to provide the practical details of the law—such as price—which are passed over in silence in the Bible. The Mishnah does indeed contain a detailed discussion of the redemption of land, but touches hardly at all upon this point. A

single passage (*Arak.* 9.2) is devoted to the question of price:

> If one sold it [i.e. a field] to the first for one hundred (dinars), and the first sold it to the second for two hundred, then he need reckon only with the first...
>
> If he sold it to the first for two hundred and the first sold it to the second for one hundred, then he need reckon only with the second...

The passage assumes that an earlier price will determine the price of redemption, but considers a complex case where the property has passed through several hands, and applies the principle that the redeemer is entitled to pay the lowest price obtained for the property since its original sale. In the case of a straightforward redemption from the original buyer, there is only the original selling price to go by. It might therefore be concluded that mishnaic law was adding a special measure favouring the redeemer in certain limited circumstances to the generally assumed rule of redemption at the original price. But again, this conclusion must remain hypothetical in the absence of supporting evidence.

The silence of both biblical and mishnaic sources on this important question is at least evidence that the answer must have been self-evident to contemporaries. The criterion that we are seeking must, therefore, have been both simple and universal. Only where special circumstances called for a less obvious variant would it need to be formulated expressly. The original selling price does meet the requirement of simplicity, but there are other candidates, as will be seen from the discussion below.

3. *Cuneiform and Biblical Sources*

The cuneiform sources contain scattered references to redemption, mostly identifiable by the use of the verb *paṭāru*, 'to loosen, release' as a technical term in the purchase of land and slaves. These references are sufficient, however, and sufficiently widespread, to show that redemption was a common feature of the legal systems of the ancient Near East.[1] Furthermore, the cuneiform sources provide a great deal

1. For Ancient Egypt see E. Seidel, *Ägyptische Rechtsgeschichte der Saiten- und Perserzeit* (2nd edn; Glückstadt, 1968), pp. 45-50.

of evidence on the law of sale, which (since redemption is no more than a term imposed by law on the contract of sale, a limitation on the freedom of contract) forms the background necessary to an understanding of the functioning of redemption.

Seen in this context, the biblical sources can also furnish a valuable contribution. It is not simply a case of the cuneiform sources explaining biblical law; since redemption existed in both systems, the incomplete details provided by the different types of sources can be combined to reconstruct an institution common to them all.

Our starting point is to examine the theories proposed as to the redemption price in various cuneiform legal systems.

The Buyer's Price

For the cases of redemption recorded in Old Babylonian documents M. Schorr supports the view that the buyer, on being forced to sell to the redeemer, could name his own price.[1] The documents in question consist of a small number of land-sale contracts[2] which differ from the standard form only in recording: (a) that the property in question had been purchased by the present seller (usually from a relative or ancestor of the present buyer), (b) that the present buyer has redeemed his family estate (é ad-da-ni in-du$_8$ / *bīt abīšu ipṭur*

Schorr points firstly to the high price recorded in one of these documents: one mina of silver for a house covering an area of half a *sar* in *BE* 6/1 37. To this it must be said that our knowledge of land values in the Old Babylonian period is still far from the point where we could state with confidence that a particular plot is over-priced or not.[3] As it so happens, the house in *BE* 6/1 37 is situated in the

1. *Urkunden des Altbabylonischen Zivil-und Prozeßrechts* (VAB, 5; Leipzig, 1913), p. 119.

2. *BE* 6/1 37 (Sippar), *BE* 6/2 45 and 64 (Nippur = VAB 5, p. 104), *CT* 2 13 (Sippar = VAB 5, p. 103), *Tell Sifr* 45 (Kutalla). Cf. *BE* 6/2 66 (Nippur = VAB 5, p. 104A) and *PBS* 8/2 138 (Nippur) concerning the redemption of prebends which are dealt with in the same way as land.

3. An attempt at proper valuation is made by D. Charpin, taking advantage of the existence of a single archive; see *Archives familiales et propriété privée en Babylonie Ancienne* (Paris, 1980), pp. 165-67. Charpin remarks (p. 165): 'L'histoire des prix comme partie intégrante d'une histoire économique quantitative n'est encore qu'un rêve pour l'historien de la Mésopotamie antique'.

cloister, and we know that such houses could command considerably higher prices than elsewhere.[1] Schorr's second piece of evidence, however, is prima facie more clear-cut. In *BE* 6/2 64 a plot of land is redeemed for 6½ shekels. According to Schorr, that same plot was sold sixteen years earlier for only 3 shekels, in *BE* 6/2 38.[2] The redeemer thus had to pay more than double in order to recover part of his family estate. But the situation is more complicated than it appears. Following Schorr's hypothesis, the history of the land in question could have been as follows:

Stage I	A sells a part of his family estate to B.
Stage II	B's sons sell the land to C for 3 shekels.
Stage III	C's brother, son and widow sell the land to its redeemer, A's son, for 6½ shekels.

Stage II is evidenced by *BE* 6/2 38 (dated Samsu-iluna 12) and Stage III by *BE* 6/2 64 (Samsu-iluna 28). Stage I is reconstructed from the contents of the two documents, although it is possible that the land may have passed through other hands between leaving A and being acquired by B. The key point, however, is that the 3 shekels paid at Stage II did not represent the original price and may not have reflected the true value of the property.[3] Only if we accept the mishnaic rule discussed above would we expect the redeemer to be entitled to the lowest price hitherto fetched by the property.[4]

1. R. Harris, *Ancient Sippar* (Istanbul, 1975), p. 24.
2. VAB 5, p. 90. Schorr is followed on this point by J.J. Finkelstein, 'Misharum Material', pp. 241-42.
3. It appears to have been sold on B's death, a circumstance which may have occasioned a low price: see Charpin, *Archives familiales*, p. 179.
4. It is not altogether certain that the two documents under discussion represent the same property. A number of small but notable discrepancies exist:

> 1. Although the same dimensions are given, the description of the property in the earlier document is 'a house' (é-dù-a), but in the later 'an empty site' (é-kislah). One might expect an empty site to be turned into a house in the course of time but the opposite development is less likely. (Ruined houses are described as such in the sale contracts: é-šubba). It could of course be a scribal error, but the two types of property are usually strictly distinguished from one another: see *CAD*, M/1, p. 370 sub *maškanu* mng. 1(b).
>
> 2. The name of the neighbouring owner, used to locate the property, differs in

The complications involved in this line of inquiry are illustrated by a further Old Babylonian contract from Kutalla: *Tell Sifr* 45.[1] This document is part of an archive reconstructed by D. Charpin, and the reconstruction shows how complex transactions in land could be. According to Charpin the background to the present transaction is as follows:[2]

Stage I	R (the present redeemer) purchased a licence to dwell in a house that he constructed on A's land.
Stage II	A sold the land from under him to B.
Stage III	In order to re-acquire the land on which he had built R gives B in exchange two plots, one of which was part of his estate. The land that R acquires is worth less than the two plots given by him, but no compensation is mentioned.
Stage IV	R does receive compensation from A for the loss of his licence to dwell. At this point the two plots that R gave to B are valued at $5\frac{3}{4}$ shekels together.
Stage V	A year after the exchange R re-purchases the two plots from B for 5 shekels. This is *Tell Sifr* 45, which contains the redemption clause. From the above it can be seen that it applies to only one of the two plots.

We have recounted this history in all its complexity (in fact, we have omitted a large number of details) in order to make a methodological point. The fact that the redemption price is slightly lower than the original exchange value could be taken simply as evidence against the hypothesis that the buyer could charge the redeemer what price he saw fit. But the background revealed by Charpin's research shows that

the two documents. This cannot be explained by a change of ownership or the passage of time, since in the second document the neighbour is the redeemer himself—in other words, the neighbouring property is the family estate from which the property being redeemed was at some time split off. It could of course be assumed that, as only one neighbour is given in each case, a different side of the property is being described.

1. Edited by Charpin, *Archives familiales*, pp. 232-33.

2. The transactions involving Ipqu-Sin, analysed in *Archives familiales*, pp. 96-106.

there is little point in weighing evidence of this nature. Behind the present redemption act may lie not a single prior transaction but a whole series involving numerous parties and plots of land. The absence of a single detail could therefore rob the figure recorded as the redemption price of a necessary point of reference.

Furthermore, the prices found in the documents, which fluctuate wildly, could as easily reflect the current market price as the buyer's arbitrary demands. Certainly, no consistent pattern of over-pricing can be discerned.

A final point is that the idea of the buyer being able to name his own price meets an obvious logical objection. It would enable the buyer to block redemption by the simple device of naming an impossibly high price and thus effectively removes any element of coercion in the law. It has been argued that redemption clauses represent a purely consensual arrangement,[1] but as Schorr himself points out,[2] it is in the nature of redemption to be coercive, and there would seem little point in making special mention of the fact of redemption if the contract were an ordinary consensual sale. Accordingly, the buyer's price hypothesis should be rejected.

The Market Price

In discussing redemption of land in Old Babylonian law, R. Yaron points out that rigid adherence to the original price might have some important drawbacks. It would fail to take into account possible changes in the value of the land and would discourage development of the property by the buyer.[3] It would therefore make better sense to take the current market price of the property, as determined by some objective criterion, for example, the price of comparable plots or the value added by development. The redemption prices discussed above might well represent the market price.

We do not know how the contemporary land market functioned, and there is no empirical evidence of the use of any such criterion in the pricing of redemption transactions. It is therefore impossible to

1. E. Cuq, 'Commentaire juridique d'un jugement sous Ammiditana', *RA* 7 (1909), p. 133.

2. *Urkunden*, p. 119.

3. *Laws of Eshnunna*, p. 153.

fashion Yaron's arguments into a market-price theory for redemption. Nevertheless, by introducing utilitarian considerations, they do raise the question of what the rationale was behind a law that represented in itself (whatever price was fixed) a severe restriction of the free market, a point to which we must return below.

The Original Price

E. Szlechter cites two pieces of evidence in favour of the original price being also the redemption price.[1] Firstly, there is the analogy of the redemption of slaves. According to CH 119:

> If a man has a debt fall due and sells his slave-girl who has borne him sons, the owner of the slave-girl shall pay the money which the merchant paid and redeem his slavegirl.

In CH 281, if a merchant buys a man's foreign-born slave in another country (the slave having presumably run away or been abducted), the owner is again entitled to redeem his slave for the money that the merchant paid, the latter stating on oath what the sum was. Secondly, the verb *paṭāru* is used for redemption of a pledge by payment of the debt. Szlechter refers to a passage in *ana ittīšu* (a neo-Assyrian lexical text): 'When he brings the silver, he shall redeem his unweighed bar of metal that he left as a pledge'.[2] The pledge in question is of a special type known as *šapartu*, which is common to Assyrian rather than Babylonian practice, and this redemption clause is sometimes found in such contracts of pledge.[3]

We therefore have two clear cases of reference to the original price. The question is how far they may be used as an analogy to sale of land. Beside the obvious fact that slavery is a complex institution with its own rules, the two paragraphs in CH may be special instances rather than application of a general principle. Certainly CH 281 arises out of an unusual set of circumstances that could occur only in the case of slaves. In the same way it may be asked how far pledge and sale—two entirely different types of contract—are to be compared. Nonetheless, it is strange that the term *paṭāru* is used to express the

1. *Les lois d'Eshnunna* (Paris, 1954), p. 96.
2. *MSL* I, 2, IV 49-53.
3. With the important difference that interest as well as capital must be paid to redeem the pledge. These contracts are analysed in detail below.

release of one particular type of pledge,[1] and we should therefore seek some rationale to the right of redemption that links its use in pledge and sale, a link that is likewise indicated by CH 119, where the sale is stated to have arisen from particular circumstances of indebtedness. Before considering this question however, we must examine a final piece of evidence, this time of a direct nature.

A Middle Babylonian document—a *kudurru* (boundary-stone) from the reign of king Meli-shihu[2]—records the history of litigation that affected a family estate over several generations. The estate of A, we are told, was left without heirs, and was therefore given by the king to A's brother, B. This would seem to follow the normal rules of succession, but in fact it resulted in a good deal of litigation before B could consolidate his ownership of the estate. Our concern is not with the claims of B's various rivals to the inheritance but the third case reported, which is one of redemption. Apparently at some point prior to B's inheritance of the estate, A had had a son (presumably since deceased) who had sold a part of the family estate to C (II.38–III.5).[3]

1. These are various ways of expressing release of a pledge, several examples of which are given by *MSL* I, 2, IV 39-48. For the Old Babylonian period, cf. VAB 5, 63A. For Nuzi, cf. *AASOR* 16, No 65:15-18, 66:18-26.

2. Published and edited by L.W. King, *Babylonian Boundary Stones in the British Museum* (London, 1912), No. III (Plates V-XXII = *BM* 90827). Our thanks are due to Mr C.B.F. Walker for collating several lines of the text at our request and to the British Museum for kind permission subsequently to collate the whole text ourselves. Needless to say, we were unable to improve on the reading of the lines collated by Mr Walker.

3. The apparent paradox of A being childless but having a son who sold part of the estate was resolved by King (*Boundary Stones,* p. 8) with the suggestion that the son in question was not a legitimate heir. In that case, however, B could have vindicated the property without payment, since the son could not have passed good title to the buyer. The text does not in fact say that A had no heirs, but that the *house* of A lapsed for want of an heir. The opening lines read:

> 1) é A ^{lú}ḫal / 2) *i-na* lugal RN / 3) *mu-nu-tuku-ta il-lik-*[*ma*] / 4) lugal RN / 5) é B [^{lú}ḫal] / 6) *a-*[*na*] *B* / 7) šeš A *i*[*d-*]*in*. 'When the house of A lapsed for want of an heir in the time of King RN, King RN gave the house (i.e. the estate) of A to B, brother of A.' (See *CAD*, A/1, p. 316 sub *alāku* mng.4 and M/2, p. 208 sub *munutukûtu*.

B now applies to the king, who vindicates (*ibqir*) the land and hands it over to B. The text continues:

> III. 3-14 And the king gave instructions to X, the governor of Nippur, and he caused D and E, the sons of C, to produce the sealed document of purchase of the field which was in C's house, and gave it to B.
>
> 15-18/ With his consent, B, *on the basis of the buyer's hand*, [. . .]
>
> 18/22 (various measures of grain) the purchase-price, (i.e.) $2\frac{2}{3}$ mina of gold in value,
>
> 23-29 [at the] Namgar-dur-Enlil Canal in the [presence of?/ name of?] B, X, the governor, weighed out and gave to D and E the sons of C, and he[1] [red]eemed that field.

The text is unfortunately broken in several places (in particular the key phrase at the beginning of line 18 is missing) and the syntax is in consequence somewhat obscure, but the following facts emerge:

1. B is able to buy back the land from its present owners, the sons of the buyer C, quite clearly against their will.
2. B pays as the purchase price of the land a quantity of grain equal to $2\frac{2}{3}$ mina of gold.
3. *Prior to payment*, C's original purchase document is demanded from the present owners and handed over to B.
4. B's payment is made on the basis of the buyer's hand. The meaning of this unusual phase is not altogether clear,[2] but if our translation is correct it equates the present payment with the price originally paid by the buyer C. It is in order to ascertain that price that the original sealed document of purchase had to be produced prior to B's payment (i.e. not simply for B's archives).

The case thus provides direct, if not unambiguous, evidence of the

1. The subject is B (Ur-Nindinlugga). He is later expressly referred to as having redeemed the field (III 46).

2. *aš-šu qa-at ša-a-ma-a-ni*. Collation leaves no doubt as to the wording of the phrase, of which no other example is known to us. The literal meaning of *aššu* is 'concerning, on account of, with regard to', which provides no enlightenment, but cf. 'he claimed *aššum ṣimdat šarrim* on the basis of a royal decree' (Grant Bus. Doc. 23:3), *CAD*, A/2, p. 468 sub *aššum*, mng. (a). Likewise the word *qātu* 'hand' has numerous meanings, none of which seems appropriate here.

original purchase price also being the price for the redemption of land. On this and the indirect evidence adduced by Szlechter, the original price hypothesis emerges as the most likely possibility in the cuneiform sources as in the Bible, but as in the latter, the very paucity of information on the point is its most striking feature, and the hypothesis is far from being proved in absolute terms.

We therefore wish to consider the question from a different point of view. If the redeemer was entitled to redeem at the original price, what motivation did the law have for granting him this privilege, and why was it universally regarded as so self-evident as to be passed over virtually in silence? The answer, we submit, lies in the conditions laid down by the law for the exercise of this right.

4. *The Conditions for Redemption*

The law of redemption in ch. 25 of Leviticus opens with the conditional clause: 'If your brother becomes impoverished and sells some of his estate... '(v. 25). The same condition—of becoming impoverished—appears in the protasis to the redemption law for persons selling themselves into slavery in v. 47. That this condition is not mere rhetoric is shown by its appearance in the only paragraph in the cuneiform law codes dealing explicitly with redemption of land. CE 39 reads:

> If a man becomes impoverished and sells his estate [lit. 'house'], the day the buyer sells, the owner of the estate may redeem.

The Akkadian verb used here for 'to become impoverished' (*enēšu*, lit. 'to grow weak') is the direct parallel of the Hebrew verb in Leviticus (*mwk*, lit. 'to sink'). In both cases, therefore, it is not every sale that gives rise to the right of redemption, but only where the seller has become poor. Note that it is not existing poverty that the law is concerned with—it is not a social welfare measure for a particular stratum. The law protects persons whose position has changed for the worse. Such a change would seem at first sight impossible to determine objectively: what loss of wealth must be proved in order for the seller to claim this right? But there is one objective criterion, and therein, in our view, lies the point of this enigmatic phrase: the price at which the owner sold. If it was far below the normal price, it

is a sure sign that the sale is made under pressing economic circumstances—in a word, debts.

Where land is sold to pay off debts fallen due, the sale will inevitably be at a discount. If the buyer is the creditor himself, it may in fact be a disguised form of distraint for debt. But whereas land distrained or at least pledged would in principle be returnable on payment of the debt, land sold is alienated forever, even though the 'price' may be little more than the value of the debt, which will usually be far below the value of the land.

Such circumstances provide a clear rationale for the right of redemption at the original price. In our view, the purpose of Lev. 25.25 and CE 39, as revealed by the common condition in their protasis, is to allow a person who has been forced to sell his ancestral (i.e. inherited, as opposed to purchased) land at undervalue[1] to buy it back at the same low price. The law is therefore no mere sop to sentimentalism, nor is it a fetter on ordinary commerce (since a sufficient price will overcome the right of redemption); it is rather an equitable measure to ensure that ancestral land is not lost forever due to temporary economic weakness.

The thinking of the law is revealed by a further condition in CE 39: the right is only exercisable to defeat re-sale by the buyer to a third party. If the owner must pay the same price as that paid (or offered) by the third party, his right of redemption is of little assistance to him. Why should the buyer refuse an offer from him at the market price, if the owner can find the means to pay it? It is more reasonable to suppose that the owner could force the first or second buyer to resell to him at the original price and thus defeat the first buyer's attempt to re-sell at a profit.[2] The first buyer has acquired a bargain,

1. According to V.A. Jakobson, 'in the old Babylonian period we should probably surmise a debtor–versus–creditor (or, in general, "weak–versus–strong") relationship behind nearly every deed of purchase of land' ('Some Problems Connected with the Rise of Landed Property [Old Babylonian Period]', in *Beiträge zur sozialen Struktur des Alten Vorderasien* [ed. H. Kleingel; Schriften zur Geschichte and Kultur des Alten Orients, 1; Berlin, 1971], p. 37). Charpin suggests that the equal division of land among heirs sometimes created plots of uneconomic size, which would force them to sell (*Archives familiales*, p. 179).

2. If the owner redeemed from the second buyer (i.e. the third party) the latter could of course sue the vendor, the first buyer, for failure to pass good title.

but as long as he holds the land himself, he is safe. It is only when he attempts to make a speculative profit by re-selling at a higher price that the owner can intervene.[1]

Biblical law expressly allows redemption not only by the original vendor but also by his relatives,[2] and as we have seen from the documents of practice, the same applies in cuneiform law. There is no reason to suppose that such redeemers could not also take advantage of the original low price of sale, especially since they were potential heirs to the property in question. Otherwise the speculator's profit would be assured by the mere circumstance of the original owner's death.[3]

5. *Redemption and the 'Full Price'*

If our thesis is correct, payment of the land's full value was both sufficient and necessary to defeat subsequent redemption of the land. There is a logical antithesis between full value and redemption price, and a contractual phrase in land sales from Susa of the Old Babylonian period provides explicit confirmation of this point.

The following formula occurs frequently in Susa sale contracts: *ul ipṭirū ul manzazānu šīmu gamru*, 'not redemption, not pledge, full price'.[4] The legal meaning of the formula has been the subject of considerable debate, most recently summarized by B. Eichler.[5]

We shall approach the problem of interpretation by looking first at the question of legal purpose. A transaction takes place in which A gives B a sum of money and B transfers to A a plot of land. From the point of view of an objective observer, these acts could represent any one of a number of legal transactions, in particular,

1. This condition is not universal, and it is possible that other cuneiform legal systems may have been more liberal as to when the owner could exercise the right. It is lacking in biblical law, which does however contain other restrictions on the owner's power: see Lev. 25.29-30.

2. Lev. 25.25; cf. vv. 48-49.

3. Presumably, more direct heirs could in turn redeem from the redeemer. See the section 'Transfer of Redemption Rights' in Chapter 3, above.

4. E.g. *MDP* 22 44:20-21, 45:15-17 *et passim*.

5. *Indenture at Nuzi* (Yale, 1973), pp. 78-80.

1. pledge, wherein the money given by A to B is a loan and the land transferred by B to A is security therefor;
2. sale, wherein the money is the purchase price and the land is alienated in consideration thereof.

It is important to distinguish between the two, because in the first case B can claim back the land from A by repaying the loan, whereas in the second there is no such facility. How is this possible from the objective circumstances, where the parties offer conflicting evidence as to the nature of the agreement? An obvious method is to look at the relative value of the land and the money, since as Eichler notes, a loan will normally represent far less than the selling price of the land.[1] The point of the phrase 'it is not (*manzazānu*) pledge, it is the full price' is, therefore, to identify the transaction as an outright sale and thus protect the buyer from subsequent claims of the seller (or his heirs) to reverse the transaction.

Since *ipṭirū* is parallel to *manzazānu* in the formula, it must represent another transaction where less than the full price is paid, and the seller (or his heirs) can therefore subsequently reverse the transaction and regain the land. These are exactly the circumstances in which we have postulated the operation of redemption. The seller must identify his transaction as involving payment of the land's full value if it is not to be subject to subsequent redemption at the original price.[2]

Our interpretation faces an objection by Eichler,[3] namely that it will only work if *ipṭirū* is taken to indicate a *redemptive transaction*, that is, sale with a power of redemption, whereas the term invariably designates a *redemption* transaction, that is, the act of redeeming property. One answer is that, if our theory as to the price of redemp-

1. *Indenture*, p. 80.

2. It is even more important for the redeemer to distinguish his act from pledge, since the sums of money involved will be much closer in value. From an objective viewpoint it will be difficult to tell whether the redeemer is buying the property (at a low price) or giving the loan for which he receives the land as pledge. Hence one contract of redemption from Susa, unfortunately broken, contains the clause: 2′ [*ú*-]*ul ma-an-za-za-nu* / 3′ *ip-ṭe₄-ru ga-am-ru-tu* 'it is not a pledge, it is full redemption' (*MDP* 18 229).

3. *Indenture*, p. 79. But for this objection, it appears that Eichler would have accepted the line of reasoning outlined above.

tion is correct, it is important for the buyer—who is an outsider—to identify his payment as the full price simply because he has no right of redemption, that is, to ward off a subsequent claim by the seller that he had bought cheap but acquired no title because it was not part of his family estate. We are not certain, however, that it is necessary to make such fine distinctions. Eichler's objection (like many of the interpretations proposed by scholars) is based on the assumption that the three members of the formula are in perfect parallelism. By their very nature, however, these three concepts are incapable of being placed on the same plane. *ipṭirū* and *manzazānu* do not designate the *price* of redemption or of pledge (i.e. the loan) respectively, and are therefore not strictly comparable with *šīmu gamru*.[1] An alternative is to take *šīmu gamru* as meaning 'complete purchase', thus making it a transaction like *manzazānu* and *ipṭirū*.[2] But then it faces Eichler's objection above, since pledge is a different type of transaction to redemption and purchase. Pledge creates a relationship between the two parties which requires a further transaction to dissolve it, whereas redemption terminates the relationship between the parties and passes ownership definitively, thus making it analogous to purchase and the antithesis of pledge—the opposite of the role assigned to it in the formula.

Accordingly, we suggest that the references in the formula are of a more general nature: the transaction is to be identified as purchase at the full price and therefore to be disassociated from legal relations involving a lesser price, whether this means the original sale of the property or its redemption.[3] Once the buyer has paid less than full

1. *CAD* (I/J, p. 171) took *ipṭirū* to mean the redemption price, following P. Koschaker (*Über einige griechische Rechtsurkunden aus den östlichen Randgebieten des Hellenismus* [Leipzig, 1931], p. 106), but this possibility had already been refuted by B. Landsberger in *MSL* I, p. 139 in analysing the lexical material. The idea of price is clearly inapplicable to *manzazānu*: the 'price' of a pledge would, if anything, be the debt itself.

2. Landsberger, *ibid.*

3. It is true that this interpretation, in setting aside Eichler's objections, does open the door again to the argument that *šīmu gamru* is to be interpreted as purchase and not price. This in fact is Yaron's interpretation: 'not (subject to) redemption, not (given as a) pledge, complete sale' (*Laws of Eshnunna*, p. 153 n. 33).

value his title is defeasible, whether it is expressed in terms of another having a right of redemption or he himself having none.

In our interpretation, the 'full price' means the full value of the property determined by some objective criterion, whether it be the market, historical cost, or other. This is to be contrasted with Eichler's own interpretation which, starting from the same premises as we do, gives a relative meaning to the term. Eichler translates the phrase under discussion: 'it is not a redemption transaction; it is not a *manzazānu*–pledge transaction; (therefore) it is the complete purchase price', and explains:

> With the assumption that the value of the pledge is usually greater than the value of the secured loan, this formula attests to the fact that the money paid constitutes the full value of the property being bought. Since the transaction is neither a redemption of property held as a pledge (i.e. the repayment of a loan on the part of the buyer), nor a pledging of property (i.e. the receiving of a loan on the part of the seller), the money constitutes the complete purchase price (i.e. the full value of the property in outright sale).[1]

Eichler thus assumes that whatever is paid for the property automatically represents its full value, if the formula identifies it as the consideration for sale. Our objections to this relative view of full value are threefold:

1. There is then no reason to distinguish between purchase and redemption. Both transfer ownership to the buyer. Why,

There are two objections:

(1) As Yaron recognizes, the meaning of the formula would then be completely different, namely a waiver of the right of redemption. If a right designed to protect persons with a weak bargaining power could simply be excluded by a contractual clause, it would stultify the law entirely, and for this reason we regard it as unlikely.

(2) If the point of the clause is not waiver, but to identify the transaction, what distinguishes complete sale from sale to subject to redemption? The indication must lie in the formula itself, and it can only be the fact the the word *šīmu* is synonymous for 'purchase' and 'price'. In the same way *ipṭerū gamrūtu* in *MDP* 18 229 must indicate redemption at the appropriate price, i.e., the full redemption value, since a pledge cannot reasonably be conceived of as an incomplete redemption.

1. *Indenture*, p. 80.

therefore, should he wish to stress that the transaction is not redemption if the money paid would be sufficient for purchase and he has no right to redeem anyway?

2. The formula is presented as a kind of syllogism: 'this transaction is not X or Y, therefore it is Z'. This is against the nature of a contractual clause. Such clauses assert truths, they do not demonstrate them.
3. Redemption is defined as release of a pledge by repayment of a loan. This is not the use of the term redemption in Babylonian practice, where it refers unambiguously to re-purchase of property sold. It does occur in Assyrian practice, but in special circumstances that require explanation and are discussed below. The presumption that *manzazānu* and *ipṭirū* at Susa (which lies in the Babylonian rather than the Assyrian sphere) are no more than correlative acts in a pledge-transaction is not tenable.

To summarize: the Susa formula, which we would translate 'it is not (a case of) redemption, it is not (a case of) pledge, it is (a case of) the full purchase price', shows that only payment of the property's full (objective) value was sufficient to give the buyer an indefeasible title which he could pass on to his own heirs. A lower payment would leave the seller or his heirs with the possibility of reversing the transaction at some future date. The point is further illustrated by looking at the continuation of the clause in which the Susa formula usually appears: 'Like a father buys for his son, PN has bought under the *kidinnu* of Shushinak, in perpetuity (*ana dārâti*)'.

Confirmation of our interpretation of the Susa formula comes from the Bible, where we find the term 'full price' (*ksp ml'*)[1] used in two narratives. In Genesis 23 Abraham seeks to purchase the cave of Machpelah from Ephron the Hittite at the full price (v. 9). He resists Ephron's attempt to give it to him, insisting on paying 'the price of the field' (*ksp hśdh*, vv. 11, 13). The reason is that he wishes to acquire an inheritable estate (*'hzh*), which can only be achieved by paying its full value.[2]

1. The equivalent term in Akkadian, *kaspu gamru*, is occasionally found instead of *šīmu gamru*: see examples given in *CAD*, K, p. 247 sub *kaspu* mng. 2.

2. See the section 'Legal Problems' in Chapter 1, above.

The second narrative is that of King David's purchase of the threshing-floor of Arauna which is reported in 2 Sam. 24.17-25 and 1 Chron. 21.18-25. Again Arauna wishes to give the land free, but David, who intends to build an altar there, insists on purchasing it. According to the Chronicler, he asks Arauna to sell at the full price (vv. 22, 24), saying, 'I will not bear that which is yours to the Lord'. Without the full price, there is no full transfer of ownership.[1]

6. *Sale, Pledge and Redemption*

Our interpretation of the Susa formula also helps to elucidate the connection between pledge and sale in the matter of redemption. As we noted above in discussing Szlechter's arguments in favour of the original price, unlike Babylonian and biblical practice (in which redemption is the re-purchase of property sold), Assyrian sources also use the verb 'to redeem' (*paṭāru*) to describe the release of a pledge by repayment of the loan plus interest.[2] The reason, we suggest, lies in the mechanism of the Assyrian pledge (*šapartu*).[3] If the loan was not repaid by the due date, there were two possible consequences, depending on the terms of the contract. In the type of contract that P. Koschaker termed 'Verfallspfand',[4] ownership in the field pledged passes automatically to the creditor. This forfeiture is expressed in

1. The biblical passages, it should be noted, are not directly concerned with the question of redemption. They present two extremes: free gift, which gives no title, and full price, which gives full title. Pledge, lease, low price, etc., represent intermediate stages with a corresponding reduction in title.

2. See P. Koschaker, *Neue Keilschriftrechtliche Rechtsurkunden aus der El-Amarna Zeit* (Leipzig, 1928), pp. 106-108. The following remarks are based upon the Middle Assyrian documents and law code. They appear to be equally valid for the neo-Assyrian period: see J.N. Postgate, *Fifty Neo-Assyrian Legal Documents* (Warminster, 1976), pp. 52-54.

3. In one instance, *MAL* 48, the verb *paṭāru* is used with a *hubullu*-pledge, but the circumstances appear to be the same as those which, as we shall see, apply to the *šapartu*-pledge, and most probably Assyrian law applied the same rules to both types of pledge. The verb is also found in one Old Babylonian *manzazānu-* contract: *YBC* 11149 (*JCS* 14 [1960] No. 54: 12-14, pp. 26-27). Its use may be connected with the enigmatic phrase in lines 10-11 of the document: 'The silver and the field look at each other'. Another unusual feature is the fixed date given for redemption.

4. *Neue Keilschriftrechtliche*, pp. 102-105.

terms of a sale, with the acquisition clause typical of sale ('acquired and taken', *uppû laqi*) and in some cases even a 'payment clause': 'they have received the lead, the price of their field, they are paid, quit'.[1] It looks very much, then, as if the creditor has obtained what the law of redemption is supposed to prevent: the outright purchase of the land for the mere price of the loan for which it was security. That the law was not so, however, is shown by a further tablet that was drawn up at the stage of forfeiture itself.[2] The text relates that 10 iku of land were pledged as security for the relatively small sum of 30 mina of lead, the due date passed and the field was duly alienated to the creditor. Lines 8-13, however, contain the following additional information: 'He [debtor] claimed[3] the price of his field, he received the balance of his lead: he received [1] talent 40 mina apart from the contents of his tablet'. In other words the creditor could indeed 'purchase' the land by way of forfeiture, but he still had to pay the full price for it, by giving the debtor the difference between the value of the loan and the value of the field.

An express statement of this rule is found in the Middle Assyrian Laws: MAL. C + G 7 reads[4]

> [If...] or anything taken as a pledge is dwelling in the house of an Assyrian and the due date passes, [after it has p]assed, if the money am[ounts] to as much as his price, he is [acqui]red and taken; if the money does not am[ount] to as much as his price, [the creditor] may acquire and take him but may not reduce [the price(?)]—he shall ded[uct] the capital of the money [i.e. the loan]. There is no [interest(?)].

1. *KAJ* 12: 15-16. Cited by Koschaker *Neue Keilschriftrechtliche*, p. 102. Edited, *ARU* No. 29. Other examples are *KAJ* 27 and 35.

2. *KAJ* 150, edited and discussed by Koschaker (*Neue Keilschriftrechtliche*, p. 103).

3. The verb is *šasû* 'to shout', which has the technical meaning 'to claim performance' (Kraus, *Königs Ammi-ṣaduqa*, pp. 54-59). Koschaker, discussing the text before the technical meaning of *šasû* was known, speculated on the possibility of a public auction being indicated (*Neue Keilschriftrechtliche*, p. 103).

4. Based on the edition of M. David, 'Eine Bestimmung über das Verfallspfand in den mittelassyrischen Gesetzen', *BO* 9 (1952), pp. 170-72. See also Cardascia, *Lois Assyriennes*, pp. 307-309. The badly broken text appears to apply to human and animal pledges, but the Assyrian law of pledge did not, it would seem, distinguish between land and moveables. See Koschaker, *Neue Keilschriftrechtliche*, p. 102.

In other words, the creditor must pay the debtor the difference between the loan and the pledge's full value if he is to gain full ownership of the pledge, unless the loan and the pledge are already equal in value. The same distinction is found in MAL A 44, where a creditor has certain disciplinary powers over a person taken as a pledge 'for the value of his price' (*am-mar šàm-šu*), and (presumably after the due date has passed) then 'taken for the full price' (*a-na šàm ga-me-er la-qí-ú-ni*). To return to our *Verfallspfand* contracts, we suspect that those containing a 'payment clause' were ones where the loan equalled the value of the pledge as in A 44, but the figures given, in part broken, are as usual no sure indication.

The second type of contract, called 'Lösungspfand' by Koschaker[1] actually contains a clause allowing the debtor to 'redeem' his pledge (after the due date) on payment of the loan capital plus interest. The use of the term to redeem is, as we have said, unusual, but the reason becomes apparent in the light of our discussion of the *Verfallspfand* above. As we have seen, forfeiture of the pledge for non-payment of the loan by the due date did not give the creditor full ownership unless he paid the balance of its value. What if the creditor did not wish to acquire the property in perpetuity, that is, make the extra capital expenditure? The property was nonetheless his, but subject to redemption because 'sold' at the 'price' of the loan, that is, at undervalue. The purpose of the redemption clause is not to state this obvious fact, but to indicate the creditor's choice in the matter: he preferred not to acquire the land in perpetuity, and the debtor could not claim the balance of the land's value from him as in *Verfallspfand*.[2] In both types of pledge contract, therefore, ownership in the pledges passes to the creditor on expiration of the term for repayment. The difference is that *Verfallspfand* contains a mechanism for acquisition of the land in perpetuity by paying its full value, while in *Lösungspfand* the land is

1. *Neue Keilschriftrechtliche*, pp. 106-108.

2. The purpose of the redemption-clause may also have been to protect the creditor's right to the punitive damages which applied after non-payment by the due date, by ensuring that they were calculated into the 'price' at which the debtor could then redeem. But note that *KAJ* 17, involving the pledge of a person, does not include interest in the redemption clause.

acquired at the price of the loan and therefore remains redeemable.[1]

7. *The Meaning of 'Full Price'*

There remains a fundamental objection to our distinction between redemption price and full price, namely the existence of a contractual formula so obviously in contradiction with it that the whole theory would appear to be stifled at the outset. We shall see, however, that further evidence leads to a re-interpretation of this formula that not only explains the apparent contradiction but has wider implications for the understanding of ancient Near Eastern contracts of sale.

The formula in question occurs in the payment clause of certain of the Old Babylonian redemption contracts. For example, the payment clause of *BE* 6/2 64 reads (lines 13-14): šám-til-la bi-š è/6½ gin kù-babbar in-ne-en-lá, 'he [the redeemer] paid 6½ shekels of silver as its full price'.[2] This is exactly the type of formula that we would expect *not* to find in a redemption contract if our hypothesis is correct.

This formula however, is standard in contracts of sale, from which the redemption contracts differ only in the additional mention of a previous sale of the property and of the fact that the present purchaser is redeeming his family estate. Its significance was long ago explained by M. San Nicolò in his classic work on Old Babylonian sale contracts.[3] In Babylonia there was in theory only cash sale: ownership in the object sold did not pass until the buyer had paid the whole of the

1. For the neo-Assyrian period, note the following remarks by Postgate: 'although the position is not altogether clear, the evidence seems to favour the idea that the object pledged would only become the property of the creditor once the debtor had failed to meet his repayment date. Thereafter, procedure seems to have varied, but in some cases at least an object which became the creditor's property by these means could be redeemed as of right by the debtor or previous owner. The few conveyances we have which release an object from pledge are phrased in most respects like an ordinary sale text, and bear the seal impression of the creditor, so that it is clear that the object had already become his property. Such pledge redemptions are characterized by the verb *paṭāru* "to release. . . " ' (*Legal Documents*, p. 29).

2. The same clause appears in *BE* 6/2 66:11-12; *CT* 45 62:19-20; *Kh.* No. 82:6-8 (*JCS* 9, No. 82, p. 96); Meissner, *BAP* 47:20-21; PBS 8/2 138:11-13. Cf. *ARU* 631.4 (neo-Assyrian).

3. *Die Schlussklauseln der altbabylonischen Kauf-und Tauschverträge* (2nd edn; ed. H. Petschow; Munich, 1974).

price.[1] If sale on credit was desired, separate arrangements had to be made, such as a fictitious loan by the seller to the purchaser of all or part of the purchase price.[2] The statement that the full price had been paid may therefore have been a legal fiction, but it was necessary to show that the buyer had the right to take possession of the property. Since the phrase 'full price' is not confined to Old Babylonian documents but is a universal component of the payment clauses of sales contracts in the whole cuneiform sphere and beyond,[3] it must be presumed to have had the same function throughout ancient Near Eastern law.[4] But this function, it is to be noted, is not the same as that proposed by us for the term 'full price' in Susa, the Bible and MAL. In the latter, 'full price' means the full value of the property as measured by some objective criterion, however it is paid, whereas in the former it means the whole of the price agreed by the parties, whatever its relation to the property's worth.

It is possible to argue that our interpretation of the term should be abandoned in favour of the cash payment interpretation in the sources considered earlier, but a glance at those sources shows this argument to be untenable. In the clause from Susa, 'not redemption, not pledge, the whole of the price (agreed)' would make no sense. Pledge (to consider the more certain element) has nothing to do with part payment; it is security for a loan, which, even if equated with the price in sale, invariably has to be repaid in full before the security can be released. The same applies to the term in MAL A 44, also concerning pledge. As far as the biblical passages are concerned, the contrast is between gift and outright sale, not between full payment and partial payment of the price. At the point when the term is used, the price has not yet been named by the seller. In any case, it strains credibility to suggest that either Abraham or King David would be seeking to purchase land on credit.

The opposite argument is equally possible, namely that the term

1. San Nicolò *Die Schlussklauseln*, pp. 7-8, 15-16.

2. San Nicolò *Die Schlussklauseln*, pp. 76-83.

3. For Elephantine see Y. Muffs, *Studies in the Aramaic Legal Papyri from Elephantine* (Leiden: Brill, 1969), p. 47.

4. See, e.g., G. Cardascia, *RLA* 518-519 under the entry 'KAUF' (on the Middle Assyrian law).

should be interpreted as meaning full value in the payment clauses of sale contracts, but this we regard as unreasonable, if not altogether untenable. If value and not payment were the point at issue, there would be no need for fictional devices to overcome the fact that payment has not been made in full.[1]

We therefore submit that the term 'full price' does indeed have two meanings, according to whether it is used in the payment clause or another context. Normally, the two meanings will coincide, but occasionally it may be necessary to emphasize that full payment is not synonymous with full value—hence a separate formula, as in Susa.

If this view is correct, then there is no contradiction between the Susa formula and the appearance of the term 'full price' in the payment clause of Old Babylonian redemption contracts. In the latter case, the term merely serves to indicate that the whole of the price has been paid and ownership may therefore pass, although the price paid does not represent the full value.[2] The hypothesis of a double meaning, however, cannot be sustained merely by its convenience for our theory; further evidence is required. To examine the whole of the cuneiform sales contracts for indications of a double usage is beyond the scope of our inquiry (and indeed practical possibility), but to look simply at the sources that we have examined so far, we may note firstly that the Susa sale contracts containing the 'no redemption, no pledge, full price' clause, also mention the full price in the payment

1. Muffs (*Studies*, p. 47) confirms the 'cash sale' hypothesis for the Elephantine law.

2. Of particular interest in this context is *Kh.* No. 82. It records the purchase of a field, in which the buyer paid one mina of silver for its full price. Nevertheless, its redemption is contemplated since lines 18-21 read: 'Whenever he (the seller) acquires money of his own, he may redeem the field. He cannot redeem the field with money belonging to another'. The editor, R. Harris, comments (*JCS* 9, p. 97): 'This clause is meant to exclude outsiders from acquiring the field cheaply. The field had obviously been undersold by (the seller) and the buyer wishes to protect himself against the possibility of a third party robbing him of his profit'. Commenting on another clause in the same contract, D.G. Evans states: 'We need not doubt that the seller was in circumstances which made him anxious for completion of the sale. For this reason, he may have tried to make the transaction more tempting to the purchaser by an added inducement, that he would continue to perform the the obligations which attached to the field' ('The Incidence of Labour-service in the Old Babylonian Period', *JAOS* 83 [1963], p. 25).

clause. For example, *MDP* 8 205.8-9 (= *MDP* 22 45) reads: *a-na si-mi-šu ga-am-ru-ti* / 8 gín kù-babbar *iš-qu-ul*, 'he paid 8 shekels of silver for its full price' (this being the Akkadian equivalent of the Sumerian phrase in the Babylonian contracts).[1] Such a double formula is not at all common in the Old Babylonian sale contracts, but it does occur in three early contracts, which all use the phrase é *a-na ga-me-er-tim i-ša-am a-na ši-mi-šu ga-am-ri-im* kù-babbar *iš-qú-ul*, 'he has bought the house for the totality, he has paid the silver for the full price'.[2] The first phrase is translated 'he bought the house in its totality' by the *Chicago Assyrian Dictionary*,[3] but this cannot be correct, since one of the contracts concerns the sale of one room in a building.[4] It is rather to be understood as an abbreviation of *ana šīmim gamrim* or *ana šīmī gamrūti*, 'for the full price'. The phrase *ana gamertim šâmum* also occurs in *CT* 45 3, the report of a trial from the reign of Sabium involving redemption, which reads as follows:

1-3	Concerning a [house] of 2 sar, next to the house of X and the house of Y,
4-6	which A son of B purchased *for the totality* from C son of [D] and
7-9	E daughter of G and her sister F redeemed:
10-16	E daughter of G, her daughter I and her father-in-law J sued E and her sister F over the house of 2 sar, and
17-18	the judges caused their case to be heard and
19-20/	rejected their vindication and claim.
20-24	H, I and her father-in-law J made out a no-claims tablet in

1. The peculiarity of the full price clause occurring twice in these contracts was noted already by E. Cuq, 'Les actes juridiques susiens', *RA* 28 (1931), p. 60.

2. *BE* 6/1 8:20-22 (Sumu-la-el); *CT* 4 48b:11-13 (Sumu-la-el); Meissner, *BAP* 35:9-11 (Imerum). See Muffs, *Studies*, p. 72.

3. Vol. G, p. 33.

4. Meissner, *BAP* 35:2-3. A further contract (*YBS* 11175:12-14 = Simmons, *JCS* 14 (1960), No. 51, p. 25) has simply: 'he has bought for the totality, he has paid the silver'. The circumstances are more complex than at first appear. We are told that A sold the land to B, but C and D are now buying from the children of A, who theoretically has nothing to sell. We consider any attempt to reconstruct the background too speculative. Likewise the text of *CT* 6 40b is too terse and obscure for meaningful analysis: 1. 3 gána ki A/ 2. dumu B/3-4. C dumu D/5. *i-ša-qá-lu* (??)/ 6. *i-ša-am*/ 7. *a-na ga-me-er-ti-šu*/ 8. *bu-ka-na-am*/ 9. *šu-tu-uq*.

favour of E and F.
in the future they shall not claim again.[1]

The curious situation revealed by this text is that the sellers of a house sue the persons who redeemed from their purchaser! The situation is explicable if we recall the terms of CE 39, that the owner may redeem if the buyer re-sells. Accordingly, the circumstances behind this litigation were, we suggest, as follows: D purchased G's house at a discount but his son C later sold it to A for its full value (*ana gamertim*). This gave G's heirs the right to redeem from A at the original low price in accordance with CE 39, which they did. This in turn gave A the right to invoke the standard warranty of the seller to be responsible for claims against the title. Presumably C's relations are now claiming the land from the redeemer on behalf of A, in pursuance of their contractual obligation to him. What basis their claim had we could not guess, but an objective observer might be tempted to conclude from the identity of the plaintiffs (if our reconstruction is correct) that C had sold property intended for his sister's dowry.

The use of the phrase *ana gamerim šâmum* in the Old Babylonian sources therefore confirms, in our view, the double meaning of the term 'full price' and illustrates its relation to redemption.

Our final piece of evidence combines biblical and cuneiform sources on the one hand, and redemption and sale on the other. In the Akkadian documents from Ugarit recording transfer of land, we often find a clause stating that the land is 'alienated for ever' (*ṣamit adi/ana dārīti*) to the person receiving it and to his children. The term *ṣamit* is a west Semitic one,[2] and it is easy to recognize it in the biblical

1. Transliteration: 1. *a-na* 2 s[ar -é-dù-a]/ 2. i-ta é *ru-ba-*[*tim*]/ 3. ù i-ta é *i-bi-*$^{[d]}$n[an]n[a]/ 4. *ša* ki *ba-za-zi-ia* dumu *ì-lí-*[*ḫa-ma-at* (?)]/ 5. ^{p}*a-mur-* ^{d}EN.ZU dumu *iš-me-* ^{d}EN.ZU/ 6. *a-na ga-me-e-er-tim i-ša-mu-ma*/ 7. ^{p}*ša-lu-ur-tum* dumu. SAL *eri*$_4$*-ba-am-*dingir/ 8. ù *na-mi-ia* nin$_q$-a-ni/ 9. é ki *a-mur-* ^{d}EN.ZU *ip-ṭú-ru-ú*/ 10. ^{p}*ru-ba-tu* dumu. SAL *ì-lí-ḫa-ma-at*/ 11. ^{p}*ḫu-du-ul-tum* dumu. SAL-a-ni/ 12. ù *e-ri-ib-*^{d}EN.ZU *e-mu-ša*/ 13. *a-na* 2 sar é-dù-a/ 14. *a-na ša-lu-ur-tum*/ 15. ù *na-mi-ia* nin$_9$ -a-ni/ 16. *ir-gu-mu-ú-ma*/ 17. *da-ia-nu di-na-am*/ 18. *ú-ša-ḫi-zu-šu-nu-ti-ma*/ 19. *ba-aq-ru-šu-nu ù ru-gu-mu-šu-nu*/ 20. *na-ás-ḫu-šu* dub *ša la ra-ga-mi-iḫ*—/ 21. ^{p}*ru-ba-tum* ^{p}*ḫu-du-ul-tum*/ 22. ù *e-ri-ib-* ^{d}EN.ZU *e-mu-ša*/ 23. *a-na ša-lu-ur-tum* ù *na-mi-ia*/ 24. *i-ze-bu-šu-nu-ši-im*/ u$_4$-kúr-šè *la i-tu-ru-ma la* i$^{!?}$*-ra-ga-mu*.

2. See J.J. Rabinowitz, 'A Biblical Parallel to a Legal Formula from Ugarit', *VT* 8 (1958), p. 95 and *CAD*, S, pp. 93-95, sub *ṣamātu*.

redemption rule in Lev. 25.29-30:

> If a man sells a house in a walled city, its redemption shall be until the expiry of one full year following its sale. If he does not redeem within a full year the house in the walled city shall pass to its buyer *as alienated for ever* (*lṣmytt* [lit. 'for alienation'] *lqnh 'tw ldrtyw*).

The *ṣamit*-clause at Ugarit therefore refers to land that *inter alia* is no longer redeemable: the conveyance is in perpetuity.[1] But the scribes at Ugarit give a further clue as to what is intended. For the most part, the word *ṣamit* is written syllabically, but occasionally a Sumerogram is substituted: šám-til-la.[2] The totally ungrammatical use of this standard Sumerian term meaning 'the full price' can only be explained by the inseparable association in the mind of the Ugaritic scribes of the irredeemability of land with payment of the full price. But the full price in which sense: full value or full payment? Again, the Ugaritic scribes are obligingly explicit. In one document, 16.147, the term šám-til-la-bi-šè, 'for its full price'[3] is found twice: once in the payment clause ('B(uyer) took the field of S(eller) for 2 talents of silver, its full price', *i-na* 2 *me-at* kù-babbar šám-til-la-bi-šè) and again in the *ṣamit*-clause. In order to distinguish it from the earlier use the scribe uses the gloss-sign (:) and writes *an-nu-tù a-na pa-ni* lugal šám-til-la-bi-šè: *ṣa-ma-tu a-na* B *ù a-na* dumu-meš-*šu a-na da-ri-ti*...[4] ('These (lands), before the king, are alienated to B and his children for ever').

8. *Conclusions*

In the legal systems of the ancient Near East there are faint but unmistakeable traces of a universal right to redeem family land. Although it cannot have been arrived at by a process of free bargaining, the price

1. For an example of redemption at Ugarit, see *RS* 8.213, *Syria* 18 (1937), p. 247 and pp. 251-53.

2. E.g., *PRU* III 15.123, 16.207.

3. As Boyer points out, the ŠÈ and most probably the BI were meaningless to the Ugaritic scribes: *PRU* III, pp. 225-26 sub 'Résultats des Actes'.

4. Another text, 16.174, has the Sumerian term glossed by *su-um-mu-ta*. Neither the grammatical form nor the function of the clause is clear. See *CAD*, S, pp. 93-95, esp. the discussion section, p. 94.

is everywhere taken as self-evident. It is nonetheless a vital factor in understanding the rationale of the law. For the right is to re-purchase at the original selling price when that price was below the full value of the land, in other words when the original sale was forced upon the owner by economic difficulties. By the same token, land that is sold at its full value is not subject to the right of redemption but passes into the hands of the buyer and his heirs forever. A secondary conclusion that arose from this is that the term 'full price' can have a dual meaning: the whole of the particular price payable, which is its normal meaning in the payment clause of sale contracts, and the full value of the property, on the rarer occasions when that point requires emphasis.

Finally, these conclusions may be applied to improve our understanding of two narrative accounts of redemption in the Bible. In ch. 4 of the Book of Ruth, Boaz informs Elimelech's nearest kinsman (and therefore his potential heir) that part of Elimelech's land had been sold by his wife Naomi,[1] and offers him the opportunity to exercise his right of redemption, that is, to buy it back from the present holder. The kinsman is eager to buy until Boaz informs him of the levirate duty that would accompany his purchase. Why is the kinsman so eager? Because the land was sold when Elimelech and his family emigrated to Moab[2] and that, as the opening verse of the book informs us, was at a time when there was famine in the land. Elimelech's land had therefore to be sold at a discount, and it is at that low price that the kinsman knows he can redeem.

In ch. 32 of Jeremiah, the prophet is prevailed upon by his cousin Hanamel to purchase his field at Anatot. This Jeremiah does, carefully noting the price (17 shekels) and then going through elaborate precautions to preserve a record of the transaction (vv. 11-15):

> I drew up the deed and sealed it, called in witnesses and weighed out the money on the scales. Then I took both the deed of purchase sealed in accordance with the law and the open copy, and gave the deed of purchase to Baruch son of Neriah, son of Mahseiah, in the presence of my cousin

1. Verses 3-5. The verb is in the past tense and should be interpreted as such. For the legal reasons, see the section, 'The Book of Ruth' in Chapter 3, above and p. 79 n. 4, above.

2. See the section, 'The Book of Ruth' in Chapter 3, above.

> Hanamel, of the witnesses who had signed the deed of purchase, and of all the Jews who were in the Court of the Guard. In their presence I instructed Baruch: 'Thus says the Lord of Hosts, God of Israel, take these deeds, the sealed deed of purchase and its open copy, and put them in an earthenware pot, so that they may be preserved for a long time'. For thus says the Lord of Hosts, God of Israel: 'Houses, fields and vineyards will again be bought in this land'.

Why is such care taken to preserve a record of the sale, and what has it to do with the possibility of future purchases? Jeremiah's action is taken at a time that is not propitious for investment in land: the Babylonian army is besieging Jerusalem and presumably laying waste the surrounding area. Hanamel's field could therefore only have fetched a pittance, and in coming to Jeremiah, he shows that he is acting out of dire necessity. Jeremiah buys the land—at its current value, not its hypothetical value—but keeps a careful record so that at some future date when the external danger is past, Hanamel or his heirs may exercise their right to redeem the field at Anatot for that same low price.[1]

1. Throughout the study we have avoided suggesting how the full value was determined, since the task is impossible in our present state of knowledge, or rather complete lack of it, as to the functioning of the land market. These two biblical narratives at least show that a simple market price criterion is not the answer, since in both cases the market itself had collapsed due to extreme circumstances.

Chapter 6

UNDIVIDED INHERITANCE

Introduction

Gaius, a Roman jurist writing in the second century AD, describes an archaic legal institution called *ercto non cito* which was already obsolete in his time:[1]

> But there is another kind of partnership special to Roman citizens. For at one time, when a *paterfamilias* died, between his legitimate heirs there was a certain partnership at the same time of positive and natural law, which was called *ercto non cito*, meaning undivided ownership. . . Other persons too, who wished to set up a partnership of the same kind. . . could do so by means of a definite *legis actio*[2] before the magistrate. Now in this form of partnership, whether between brothers succeeding as legitimate heirs or between others who contracted a partnership on the model of such brothers, there was this peculiarity, that even one of the partners by manumitting a slave held in common made him free and acquired a freedman for all, and also that one member by alienating a thing held in common by mancipation[3] made it the property of the person receiving it by mancipation.

1. *The Institutes of Gaius*, 3.154a-154b (ed. F. de Zulueta; Oxford, 1946). For a recent translation see W.M. Gordon and O.F. Robinson, *The Institutes of Gaius* (Ithaca, 1988). This passage, missing from the main ms., derives from the Antinoite fragments, discovered in 1933; see H.L.W. Nelson, *Überlieferung, Aufbau und Stil von Gai Institutiones* (Leiden: Brill, 1981), pp. 17-18.

2. The archaic system of procedure, obsolete in Gaius's time. See de Zulueta, *Institutes*, Pt 2, pp. 230-232.

3. A formal ceremony for the transfer of certain types of goods. See de Zulueta, *Institutes*, Pt 2, pp. 57-60. For its possible Near Eastern origins, see Westbrook, 'Restrictions on Alienation of Property in Early Roman Law', in *New Perspectives in the Roman Law of Property* (ed. P. Birks; Oxford, 1989), pp. 207-13.

The main features of the institution are thus:

1. co-heirs held the paternal estate in common;
2. each could act as owner over the whole property, and thus incur rights and duties for the other co-heirs as well as himself;
3. the partnership naturally formed by the existence of an undivided inheritance could be artificially created by persons who were not co-heirs;
4. nothing is said as to how the partnership ended and the co-heirs (or partners) became owners of individual shares in the property, but in another context,[1] Gaius discusses a legal action called the *actio familiae erciscundae*, which, he says, was derived from the Twelve Tables (the earliest Roman law code, traditionally dated to the 5th century BC) and which was used by co-heirs to divide an inheritance. It is reasonable to suppose that this action originated as a means of dissolving *ercto non cito* when it was still part of the law in force. Thus *ercto non cito* was not a permanent form of inheritance but an arrangement that could be ended under certain circumstances, like the partnerships with which it is classified.

It was Daube[2] who first noticed the connection between this institution and the term 'brothers dwelling together' in the Bible, and concluded that the latter referred to the situation where on the death of a *paterfamilias* two or more of his heirs, instead of partitioning the estate and breaking up into separate families, remain together to enjoy the inheritance in common.

Koschaker[3] had earlier noted scattered references in cuneiform documents to 'brotherhood', in connection with communal property. Since throughout the cuneiform record inheritance is patriarchal, with the sons dividing the paternal estate between them and creating new, independent households, he concluded that these references were the

1. Digest 10.2.1. See also *Institutes* 2.219 and 4.17a. Cf. Cicero, *Pro Caecina* 7.19.

2. D. Daube, '*Consortium* in Roman and Hebrew Law', *The Juridical Review* 72 (1950), pp. 71-91.

3. P. Koschaker, 'Fratriarchat, Hausgemeinschaft und Mutterrecht in Keilschriftrechten', *ZA* 41 (1933), pp. 1-89, esp. pp. 37-42, 46-51, 68-80.

remnants of an earlier, fratriarchal system, in which the eldest brother was the head of a communal household and was succeeded in this position not necessarily by his sons but by his next eldest brother. There is, however, in terms of inheritance at least,[1] no evidence whatsoever that such a system ever existed in any society for which there are cuneiform records, and the discovery of the Gaius passage (after Koschaker's article)[2] offers a far better explanation. As with the biblical term, 'brotherhood' in these sources refers not to a type of inheritance but simply to a stage in the process of inheritance which came to prominence if division of the inheritance were postponed.

Subsequently, evidence has accumulated both from Mesopotamian[3] and Egyptian sources[4] that division of the inheritance could be postponed for many years, sometimes over generations. It emerges that the institution of undivided inheritance was widespread throughout the ancient Near East, and gave rise to difficult legal problems which exercised the minds of ancient scholars, finding expression in various of the early law codes, cuneiform, biblical, Greek and Roman. In my view, therefore, the appearance of such problems in early Roman Law and in the Bible is the result not of coincidence nor of parallel development but of an older and much wider common legal tradition. The purpose of this study is to examine the biblical institution in the context of the tradition as a whole, combining the fragments of the evidence from each legal system to construct a composite picture of the law governing undivided inheritance.

The Evidence of the Sources

Paragraph 16 of the Codex Eshnunna, dating from the 18th century, contains the following provision:

1. Koschaker also discusses the system in other contexts, such as the customs of marriage and royal succession. His conclusions are equally disputable, but discussion would take us beyond the bounds of the present study.

2. But see still F.R. Kraus, 'Erbrechtliche Terminologie in alten Mesopotamien', in *Essays on Oriental Laws of Succession* (SDIOAP, 9; ed. J. Brugman; Leiden: Brill, 1969), pp. 27-29.

3. F.R. Kraus, 'Nippur und Isin', *JCS* 3 (1949), pp. 149-56.

4. P.W. Pestman, 'The Law of Succession in Ancient Egypt', in *Oriental Laws*, pp. 64-65.

The undivided son of a man, or a slave, shall not have a deposit made with him (*ul iqqīap*).

The verb *qiāpum*, as Szlechter rightly observed,[1] indicates here a *depositum irregulare*, that is, the transfer of generic goods of which the transferee becomes the owner, with an obligation to restore not the same goods but the same quantity of like goods at a later date. Thus the depositee, while receiving an immediate benefit, also incurred a legal obligation. The law deals with two analogous cases where a person acquiring possession for himself thereby acquires ownership for another and thus imposes upon the latter the obligation to repay. Since a slave could not acquire ownership in his own right, ownership in the deposit would automatically vest in his master, along with the obligation to repay, if need be from his own capital, if the slave had in the meanwhile dissipated the goods. The same applies to the undivided son. The latter could mean a son whose father is still alive but who has not divided the estate, as opposed to one who already has, but division during the father's lifetime appears to have been a very rare, if not aberrant event in Mesopotamia.[2] I consider it more likely, therefore, that the term includes, and most probably is focused upon, the undivided heir. By acquiring possession of the goods, he automatically acquired ownership for his father (if alive) or all his co-heirs, which here involved the obligation to repay, if need be from their common property.

The paragraph does not specify a sanction for breach of the prohibition, but the sanction was probably unenforceability.[3] Similar

1. E. Szlechter, *Les lois d'Eshnunna* (Paris, 1954), pp. 72-73. It could also be regarded as a loan (see *CAD*, Q, p. 96 sub *qâpu* A 4: 'to make a *qīptu* loan'), just as a deposit in a current account nowadays is strictly speaking a loan to the bank.

2. Elsewhere in the codes the son still under his father's authority is simply 'the son of a man' (e.g. CE 17, 58). Note especially CH 7 where it is theft to purchase goods from a slave or the 'son of a man' without a proper contract, on the assumption that the son has no authority to deal with his father's property. Division in the father's lifetime is attested only in Seleucid documents, but even there G. McEwan (*OECT* 9, pp. 13-16) considers that the division actually took place only after the father's death, i.e., that it was no more than designation of inheritance-shares. Further mention of the possibility occurs in two omens (YOS 10 41:33-4; CT 39 35:44) in the context of disasters that can befall a household.

3. Cf. H. Petschow, 'Zur Unwirksamkeit verbotener Rechtsgeschäfte im altbaby-

precautions are attested from contractual arrangements. In CT 47 63, a more or less contemporary document from northern Babylonia,[1] Belessunu, an aged *nadītum*-priestess of Shamash (a class of cloistered women who did not marry), in accordance with customary practice adopted a younger priestess, one Amat-mamu, as her universal heir. Under the terms of the agreement, Amat-mamu was to gain immediate possession of Belessunu's property (and thus the usufruct), in return for payment of a regular pension to Belessunu as long as she lived. A further clause adds (lines 31-35): 'Amat-mamu has paid Belessunu's debt of 45 shekels. Belessunu shall not borrow at interest nor shall she place this, her property, as security for a loan of hers. Whoever deposits (*iqīpu*) grain or silver with her shall forfeit their property.'

Amat-mamu was clearly concerned that her inheritance might become liable to repay the testator's creditors or depositors, and was apparently able by this contractual clause to put potential creditors on notice that Belessunu was no longer authorized to make contracts binding her estate, which would therefore be unenforceable.

Tablet B of the Middle Assyrian Laws, dating from the 14th–13th centuries, discusses some of the implications of the undivided inheritance for other areas of law, and the difficulties that may arise between the co-heirs themselves.[2]

Paragraph 2 reads:

> If one of undivided brothers kills a person, they shall give him to the person's avenger.[3] If he chooses, the avenger may kill him, or if he chooses he may accept composition and take his inheritance share.

The law regarding homicide which is adumbrated in this paragraph is that the victim's next-of-kin has the right to take revenge on the culprit by killing him or to accept ransom from the culprit as the price

lonischen Recht', *ZA* 54 (1961), pp. 197-200.

1. Sippar, Samsu-iluna 14.

2. Paragraph 25 of Tablet A also mentions the undivided heirs in passing. From 25 and 26 we learn that if a husband dies and his wife is still living in her father's house, the jewellery (*dumāqi*) that her husband has bestowed upon her devolved in descending order upon (a) children of the wife (i.e. of the marriage?); (b) other children of the husband; (c) the husband's brothers if his inheritance is undivided; (d) failing all the above, the wife herself.

3. *bēl napšāte*, lit., 'owner of the life'.

of sparing his life. In principle, the amount of ransom is a matter for free bargaining between the parties. To save his life, the culprit may be forced to offer all he has, which in the case of the undivided heir introduces a complication. Theoretically, he is owner of the whole estate, and the avenger could demand as much, including the potential shares of the innocent co-heirs. Accordingly, the law limits the maximum ransom that the avenger can demand to a single inheritance share. Cardascia[1] supposes that the co-heirs are obliged to accept the avenger as a co-owner among them or to separate out a single share, leaving the rest as common property. I consider it more likely that a forced division is contemplated by this rule, since (a) the avenger is expressly stated to take 'his share' (HA.LA-*šu*), which cannot exist before division, and (b) the size and location of that share cannot be ascertained without going through the elaborate procedure of dividing the whole of the estate, in particular the land, which will involve casting lots and choosing portions (cf. MAL B 1).[2]

Paragraph 3 concerns a similar problem:

> If one of undivided brothers utters treason or is a fugitive, as for his inheritance share, the king may do as he pleases.

The background to this ruling is the right of the king to confiscate the goods of a traitor. In Wiseman, Alalakh 17, we are told that a certain Apra became a traitor (*bēl mašikti*, 'evildoer'), was executed for his crime and his estate[3] entered the palace. Similarly, in 1 Kgs 21.1-16, Naboth is falsely accused of treason precisely so that the king can acquire his vineyard upon his execution. In the present text, the king is theoretically entitled to the whole of the undivided estate of which the traitor is a co-owner, but in its phrasing the paragraph assumes that the king's rights are restricted to a single inheritance share, thus sparing the innocent co-heirs.

1. *Lois assyriennes*, p. 265.

2. The premature separation of a single heir's share is achieved by providing him with a gift of moveables, not land. This method is used for the rejected orphan in CH 191, the illegitimate sons dismissed by Abraham (Gen. 15.6) and for the prodigal son in Lk. 15.12. Possibly it could apply to the avenger in our case.

3. É-*su*, 'his house'. The reference must be to the whole of Apra's property, since it included a betrothal payment made to Apra by one Shatuwa, who managed to recover his payment from the palace.

The principle being applied is stated more expressly in paragraph 2 of Tablet A:

> If a woman, whether the wife of a man or the daughter of a man, speaks blasphemy or sedition, that woman shall bear her punishment; her husband, sons or daughters shall not be touched.

In other words, the punishment for treason, which might be expected to apply to the whole family,[1] is restricted to the culprit alone.

As in the preceding case, we assume that here also the king could force a division of the inheritance. The king's discretion, as Cardascia points out,[2] was most probably to keep the traitor's inheritance share for himself or to allocate it to a loyal subject. Driver and Miles[3] draw attention to contemporary documents in which the king grants to A 'an inheritance share of the palace' (HA.LA É.GAL-*lim*) from the house of B, and Cardascia suggests[4] that this was confiscated land administered by the palace as part of its own estate until its reallocation.

Paragraph 4 is unfortunately broken, but enough remains to be able to reconstruct a tale of cheating between co-heirs:

> If brothers have an undivided field and one of the brothers sows seed. . . and cultivates the field, but a[nother brother] comes and takes the [crop] of his brother's cultivated field for a second time, if it has been proved against him,. . . [his brother] who cultivated the [field] shall take. . .

From this ruling we learn that while ownership may have been communistic, division of the fruits of labour was not. The brother who invested seed and labour in a common field was entitled to harvest it for himself. The penalty against the parasitic co-heir is lost, but involved confiscation by the other of some property, most probably his potential share of the field. The application of the penalty only when the offence is repeated is a familiar device for offences within the family sphere,[5] but raises the question why, if there had already

1. In the case of Naboth, we are subsequently informed that his sons were executed with him: 2 Kgs 9.26.
2. *Lois assyriennes*, p. 266.
3. *Assyrian Laws*, p. 299.
4. *Lois assyriennes*.
5. See G. Cardascia, 'L'indulgence pour la première faute dans les droits du

been a dispute between the co-heirs as to the crop, the inheritance had not been divided. Apparently, division without mutual consent was no easy matter.[1] For more information on this and other questions concerning the management of the undivided estate, we must turn to sources outside Assyria.

From Egyptian documents of the same period we learn that one of the co-heirs could be appointed administrator (*rwḏw*) and have charge over the property until division. In an adoption document from the 11th century,[2] a childless woman adopts her brother Padiu and three children of her slave-woman and provides:

> If I have fields in the country, or if I have any property in the land, or if I have goods, these shall be divided among my four children, Padiu being one of them. As regards these matters of which I have spoken, they are entrusted in their entirety to Padiu, this son of mine who dealt well with me when I was a widow and when my husband had died.

In a report of a law-suit from the 14th century[3] it is recorded that a woman was appointed administrator (*rwḏw* of the inheritance for her brothers and sisters by a court order. The special circumstances which necessitated the court order are not revealed by the document. We cannot be certain that the mere failure of the father to make an appointment was sufficient grounds for a court order; it may well have been that the existence of an administrator was the exception rather than the rule, particularly if all the co-heirs were of age. A very late Egyptian source, the Demotic Code of Hermopolis West from the 3rd century,[4] suggests that the duties of administrator of the estate fell automatically upon the eldest son: it is provided that if a man dies not having written shares for his children while alive, it is his eldest son who takes possession of his property and is responsible

proche-orient ancien', in *Estudios en Homenaje al Juan Iglesias* (Madrid, 1988), pp. 651-74, esp. pp. 658-59.

1. The difficulty could have been economic as well as legal: division might result in a plot too small to be viable. See W.F. Leemans, 'The Interpretation of 38 of the Laws of Eshnunna', *JESHO* 27 (1983), pp. 60-64.

2. A. Gardiner, 'Adoption Extraordinary', *JEA* 26 (1940), pp. 23-29.

3. *The Mes Inscription* (ed. A. Gardiner; Leipzig, 1904). See now G.A. Gaballa, *The Memphite Tomb Chapel of Mose* (Warminster, 1977), pp. 22-30.

4. *The Demotic Legal Code of Hermopolis West* (Bibliotheque d'Etude, 45; ed. G. Mattha; Paris, 1975).

for dividing the estate among the heirs (VIII.30-31).

Finally, a 13th-century record of litigation addresses the problem of what happens when the administrator himself is corrupt.[1] Nefer-abu, a co-heir, sues Niay, the administrator (*rwḏw* of the brothers, claiming that the latter had wrongfully seized his share of the land together with the (other) brothers and until now he has not received his share, which he wishes to lease out to a temple. Nefer-abu produces his documents to the court and Niay admits their validity. There follows a description of the land comprising Nefer-abu's share and a recapitulaton of the acreage allotted to the other co-heirs and their descendants. As a penalty for wrongly exploiting Nefer-abu's land (together with the other co-heirs), Niay must provide the labour for that land for an equal period of time.

According to Helck, the legal situation described by the text is as follows: Nefer-abu was prevented by his brother Niay, the administrator of the common property, from enjoying the usufruct of the fields allotted to him. In order to get at least part of the income, Nefer-abu assigns those fields to the temple. For this purpose a court proceeding was necessary, since the administrator must give his consent. Against the temple, which was represented in court, Niay could not dare to continue to withhold the field illegally and gave his consent.

On this view, the property remains undivided throughout and only the right to a usufruct is at issue. Helck's legal analysis, however, is somewhat confused: consent to the leasing of part of the property (a requirement nowhere stated in the document) has nothing to do with his illegal withholding of income. Moreover, the leasing of specific lands by Nefer-abu to the temple would seem incompatible with the continuation of an undivided inheritance. A simpler explanation, it seems to us, is that the administrator and the other coheirs corruptly withheld profits from the common land[2] from Nefer-abu, whose desire was to proceed to a division and lease out his own

1. See K. Baer, 'The Low Price of Land in Ancient Egypt', *JARCE* 1 (1962), pp. 36-39, and W. Helck, 'Der Papyrus P 3047', *JARCE* 2 (1963), pp. 63-73. Although Helck improves on Baer's readings, his legal analysis is questionable: see below. I am grateful to Dr B. Bryan for assistance with the Egyptian terminology; responsibility for errors rests solely with myself.

2. It is possible that the land had been allocated by the father in his lifetime, and that Nefer-abu was therefore entitled to profits from his share even before division.

share. It is this end that he finally achieves by a court order.

On this analysis, a co-heir could force a division of the inheritance by legal action, but possibly only where the abuse of authority by another co-heir justified ending the state of undivided inheritance. In a much later period, in the Demotic Code of Hermopolis West, it is provided that if the younger brothers bring an action against their elder brother saying 'Let him give us shares of the estate of our father', the eldest brother must follow the procedure for division (VIII.31), but it is not clear what degree of consensus was necessary; for example, could a single co-heir have brought the action?

Documents from 18th-century Elam cast light on another possibility mentioned by Gaius, that persons other than natural co-heirs could establish a partnership of the same kind. The method employed was *adoptio in fratrem*. Adoption in the ancient Near East was a versatile tool, the use of which went far beyond purely familial concerns. It was frequently used as a device to overcome certain legal disabilities, such as the lack of capacity in the head of household to bequeathe family property to anyone other than his legitimate heirs.[1] Adoption as a brother could create the same community of property as between legitimate co-heirs. Thus MDP 28 425 reads:

1-2	Puzuzu and Ibni-Erra are brothers.
2-8	Ibni-Erra has ownership in Puzuzu's property, be it little or much; Puzuzu has ownership in Ibni-Erra's property, be it little or much.
8-13	Should Puzuzu acquire property or silver, Ibni-Erra will be able to divide it; should Ibni-Erra acquire property or silver, Puzuzu will be able to divide it.
14-15	Brother will bury brother.
15-17	(Witnesses.)
18-20	Concerning 10 shekels of silver, which Ibni-Erra gave Puzuzu as the price of a field, Puzuzu will love [?] his brotherhood [?]

1. The most blatant example is the 'sale-adoption' contracts from Nuzi. See E. Cassin, *L'adoption à Nuzi* (Paris, 1938), pp. 51-254. On the other hand, tablets of *adoptio in fratrem* from Nuzi seem to be designed to regulate family matters rather than to create a partnership. Three texts (JEN 87, 204 and 604) have been analysed by J. Lewy ('The *aḫḫûtu* Documents from Nuzi', *Or* ns 9 (1940), pp. 362-73), who has shown that they concern the adoption by legitimate sons of an illegitimate brother (i.e. by their father's concubine) to whom they concede a share in the paternal estate. Two other texts concern sale-adoptions (JEN 99 and 570) but the reason for the use of this form, as with other sale-adoptions, remains obscure.

21-26 If one says to the other, 'You are not my brother', he shall pay 10 mina of silver and his tongue and hand will be cut off.

The text begins with a bare statement of status, but from the penalty clause in lines 21-26, typical of adoption contracts, it may be deduced that the status was based on a preceding *adoptio in fratrem*. Each partner is given theoretical ownership over all the existing assets and the right to share all after-acquired assets upon division. The consequences of community of property are thus graphically illustrated. Nonetheless, it is not merely a property arrangement, for lines 14-15 impose mutual responsibility for ensuring the other partner's burial. (Presumably the survivor would be buried by the predeceased's descendants.) An obscure clause in lines 18-20 makes one adjustment to a previous transaction between the two in the light of their new partnership, confirming that it is nonetheless based upon commercial relations. The penalty clause in lines 21-26 reveals that the partnership could be dissolved by the standard method for terminating adoption, namely the pronouncement of the appropriate *verba solemnia*.[1] This is not, however, instructive for the dissolution of undivided inheritance between natural siblings. While adoption mimics family relationships, in ancient Near Eastern law it differs in one vital detail. Having been created artificially by a unilateral act of will on the part of the adopter, it can at any time be dissolved by a contrary act of will by the adopter or indeed the adoptee, if expressed with the appropriate formality—a luxury that was not open to natural parents and children.[2] The whole purpose of the penalty clauses in the contracts that

1. 'You are not my son' and 'You are not my father/mother' respectively. See, e.g., the standard formulae in *ana ittīšu*, 7 III, 23-45 (= MSL I, pp. 101-102).

2. Thus, according to CH 168-69, a natural father needed a court order, on the grounds of repeated misconduct, in order to disinherit his son. Compare the case of the adoptee in an Old Babylonian document, YOS 2 50:5-12 (= AbB 9 50): 'My mother, a *nadītum*, adopted a boy. That boy ran away and I gathered 20 elders of the city for his (case) and established his case (i.e. that he had run away) before them, and I expelled that boy from the brotherhood for running away 3 years ago. . . ' Neither adopter nor adoptee had pronounced the *verba solemnia*, but after the adopter's death a sibling was able to obtain a court order disinheriting the adoptee (still undivided, hence the reference to expelling from the brotherhood) simply for running away from home. On the theoretical basis, see Westbrook, *Old Babylonian Marriage Law*, pp. 58-59, 82b.

accompany adoption was to guard against the effects of unilateral dissolution and even to deter it. In MDP 28 425 the penalty clause is clearly *in terrorem*.

Two further documents illustrate the use of *adoptio in fratrem* to create a partnership, but with added complications. In the first, MDP 18 202 (= 22 3), a man adopts his paternal aunt as his 'brother'.[1] It is then stipulated that the adopter has no right to the adoptee's property but that his property is given to the adoptee. The second, MDP 23 286, reads:

> Ana-ilima-atkal. . . has adopted Nur-Šušinak as a brother in order that he may acquire his property. Nur-Šušinak is entitled to the property of Ana-ilima-atkal in town and country—field, house and orchard, goods and chattels as much as there be. He shall divide (it). Ana-ilima-atkal is not entitled to the property of Nur-Šušinak in town and country house, field and orchard.

Koschaker[2] wondered why *adoptio in fratrem* is necessary here, when the point is obviously to allow the adoptee to inherit from the adopter. The same, he reasoned, could be achieved by ordinary adoption, where the adoptee would equally receive his inheritance share, alongside natural issue of the adopter, if there were any. We do not know the background to these transactions, but a simple explanation would lie in the size of the inheritance share. If, for example, A has two sons and adopts B as a son, on A's death B will receive a one-third share of A's estate along with the other two heirs. If, on the other hand, B is adopted as A's brother, he is entitled to one half of the undivided property, whereas on A's death his two sons will be entitled only to one quarter each, as heirs *per stirpes* of A's share, when a division is made. Furthermore, as a brother, B might not have to wait for A's death; the division could take place in A's lifetime. In MDP 23 286 the adoptee is expressly given the right to divide the adopter's estate, but whether it is with the adopter's heirs or with the adopter himself is not stated.

The remarkable factor in these two transactions is that they did not

1. Lit., 'for brotherhood' (*ana aḫḫūti*). Adoption 'for sisterhood' (*ana aḫātūti*) had a different purpose; see S. Greengus, 'Sisterhood Adoption at Nuzi and in Genesis', *HUCA* 46 (1975), pp. 5-31.

2. 'Fratriarchat', p. 51.

create a universal partnership; the adoptee was able to keep his previously owned assets out of the communal property. I suggest that this clause confirms that the size of the inheritance share was the motive behind the choice of *adoptio in fratrem*. If the estate to be divided with the adopter's heirs included the adoptee's own assets, the adoptee's advantage in the arrangement would be lost.

The existence of natural issue of the adopter whose interests might be in conflict with those of the adopted brother is revealed by a record of litigation from Susa. In MDP 23 321/2 the plaintiffs (P) claim lands from the defendant (D). D replies that his father had been adopted as a brother by P's father and declares (l. 16-20): 'In accordance with the rule. . . that brotherhood is brotherhood and sonship is sonship,[1] the property of my father had devolved upon [lit., 'returned to'] me'. In other words, D's father was entitled to the property by reason of his being the surviving co-heir in a case of undivided property, and D is entitled to take over his father's rights by reason of being his natural issue. Valid though this principle might be, it does not avail the defendant in the particular case, since the court rules in favour of the plaintiffs on the basis of documents produced by them, albeit on grounds that are not made clear.[2]

The creation of partnership through *adoptio in fratrem* was not confined to Elam, as its appearance in a document from Ugarit (c. 13th century) demonstrates. RS 21.230 reads:[3]

1. *ina kubussê ša aḫḫūtam aḫḫūtam u mārūtam mārūtam*. . .

2. The court does not state its grounds and they are not readily deducible from the facts given. P produce documents to prove that their father had in fact divided the estate in his lifetime with a different brother. Did this mean that D's story was untrue, or did it only affect the size of his father's share in some way? A further complication is that although the court declares in P's favour (ll. 38-40 *lē'ûssunu iškunū*), it then appears to divide the property between P and D (ll. 41-46 partly broken). See Koschaker, 'Fratriarchat', 49-51.

3. Ugaritica V 173-175. C.H. Gordon ('Marriage in the Guise of Siblingship', *UF* 20 [1988], pp. 53-56) reinterprets the text as follows: 'a woman does indeed adopt a man as her brother, but only as a legal fiction for marrying him on terms favorable to her'. But there is not a shred of evidence in the text to suggest that it had anything to do with marriage.

1-5	From this day, before [witnesses] Inuya has adopted Iadu-Adu as her brother. Among the sons/daughters. . .[1] for[ever(?)], there is between them no elder or younger.
6-12	Iadu-Adu has caused to enter 1,000 (shekels) of silver and 3 talents of bronze, 4 female slaves, 6 male slaves, 100 sheep, 9 oxen, 2 asses, 20 chairs, 2 beds, [ ] tables: this is what Iadu-Adu has caused to enter the house of Inuya.
13-16	If Inuya [hates] Iadu-Adu and [expels] him, Inuya shall pay Iadu-Adu [x shekels of] silver.
17-23	Furthermore, everything that belongs to Inuya and to Iadu-Adu, fields, houses, male and female slaves, oxen, asses, table and chairs: everything that belongs to them shall be divided between Inuya and Iadu-Adu.
24-27	And if Iadu-Adu hates his sister Inuya and [says:] 'I will not dwell with you', Iadu-Adu shall [. . .] and leave.
28-31	And if Inuya d[ies(?), everything](belongs) to Iadu-Adu. And if Iadu-Adu [dies(?),. . .] everything (belongs) to [Inuya].
32-41	(Fragmentary.)
42-45	(Witnesses.)

The adoptee enters the adopter's domicile and contributes a very substantial sum in moveable property, while the latter contributes at least the real estate component. From the statement in line 23 that the total is to be divided between them in certain circumstances we understand that their property was held in common. Whatever the value of their respective contributions, the partners are to enjoy equal status: there is to be 'no elder or younger' among them.[2] The elder sibling would normally be entitled to an extra share of the inheritance and possibly to some authority over the younger pending division.

Lines 13-16 constitute a penalty clause for the event that the sister dissolves the adoption without just cause.[3] The amount of payment is not preserved, but it seems designed to be less than an absolute

1. DUMU.MEŠ *am-ma-ti*. The latter word is of unknown meaning, possibly west Semitic. See J. Huehnergard, *Ugaritic Vocabulary in Syllabic Transcription* (Harvard Semitic Studies, 32; Atlanta, 1987), p. 189 and cf. RS 15.92.6 (PRU 3 55).

2. Line 5. The same phrase is used in an Emar text: D. Arnaud, *Recherches au pays d'Astata* (Emar VI 3; Paris, 1986), no. 93.7.

3. This is the meaning of 'hates' (*tezêr*) if it is to be restored in l. 14 in parallelism to line 24. See Westbrook, 'The Prohibition on Restoration of Marriage in Deuteronomy 24:14' in *Studies in Bible* (ed. S. Japhet; Scripta Hierosolymitana, 31; Jerusalem, 1986), pp. 399-403.

deterrent, in contrast to its Elamite analogue.

Lines 17-23 are curiously placed. The adverb 'furthermore' (*šanīta*) suggests a new clause, but its position among the penalty clauses suggests that it was a continuation of the penalty. Most probably it is a reiteration of the consequences of equal partnership which will apply even if the adoptress unilaterally dissolves the adoption, and in addition to pecuniary penalty imposed upon her.

Lines 24-27 continue with the penalty upon the adoptee for unilateral dissolution, the full details of which are not preserved, but which may well have entailed loss of his share of the property.[1] If our reconstruction of lines 28-31 is correct, they reiterate the principle of survivorship which characterizes undivided ownership.

In the Bible, the status of undivided heir is indicated by the technical term 'dwelling together'. Psalm 133 opens 'Behold, how good and pleasant it is—brothers dwelling together'. As Daube points out,[2] the verse is referring not to amicable relations between brothers, but to the partnership of co-heirs. Its function in this context has been explained by Berlin[3] as a metaphor for an undivided kingdom. The psalm expresses a hope for the reunification of Israel and Judah in a single kingdom with Jerusalem as its capital. As we have seen, the reality of co-heirship could be less pleasant, with ample scope for disputes and fraud. But the psalm shows that undivided inheritance was regarded as a desirable state of affairs, to be maintained wherever possible.

Even with the best will in the world, however, the practical problems of remaining in undivided partnership may be insurmountable. Abraham and Lot are unable to continue 'dwelling together' because of the pressure of their flocks on the common grazing land (Gen. 13.1-6). Although Lot is Abraham's nephew, they are 'men (who are) brothers' (*'nšym 'ḥym*: v. 8). The expression could simply mean that Lot occupies the position of his father, Abraham's brother, who is deceased.[4] But it might also be a reference to a contractual partnership

1. Cf. PRU III, 54-56, No. 15.92:13-14.
2. *'Consortium'*, p. 73.
3. A. Berlin, 'On the Interpretation of Psalm 133', in *Directions in Biblical Hebrew Poetry* (ed. E.R. Follis; Sheffield, 1987), pp. 141-47.
4. As noted by Daube, *'Consortium'*, p. 75.

between the two, as in the examples from Elam and Ugarit. It is to be noted that each partner maintains a separate household, with his own flocks and servants at his command. It is only the land, or rather the grazing rights over it, that are held in common, and that land was not part of their ancestral estate, which presumably had been abandoned when Abraham and Lot had left Haran (Gen. 12.5). For all the good will between the two, the shortage of grazing leads to conflict between their shepherds (v. 7), and they therefore divide their territory by mutual consent (vv. 9-12), with Abraham effectively conceding the better portion to Lot.

Support for the view that Abraham and Lot's relationship is a voluntary, not a natural, partnership is furnished by the parallel case of Laban and Jacob. When Jacob comes to Laban, his maternal uncle, Gen. 29.14-15 describes their initial relations thus:

> Laban then said to him, 'You are truly my bone and flesh'. When he had stayed with him a month's time, Laban said to Jacob, 'Just because you are my kinsman, should you serve me for nothing? Tell me, what shall your wages be?' (JPS).

Daube and Yaron have reinterpreted this passage, demonstrating its legal implications.[1] Laban's initial statement is the acknowledgment of a legal tie, which confers the status of 'brother' on his nephew. Elsewhere, the same declaration has the same result where there is no question of biological brotherhood. Thus in Judg. 9.2-3 Abimelech goes to his maternal uncles at Shechem and declares: 'I am your bone and flesh'. The latter then persuade the lords of Shechem to accept him as ruler, with the statement: 'he is our brother'. Likewise in 2 Sam. 19.12-13, David sends word to the elders of Judah: 'You are my brother, you are my bone and flesh'.[2]

The result of Laban's declaration is that Jacob 'dwells with him' (*yšb 'mw*), a phrase reminiscent of the term for partnership: 'dwelling together'. Daube and Yaron suggest that the slight difference in phraseology may allude to an unequal relationship, in which

1. D. Daube and R. Yaron, 'Jacob's Reception by Laban', *JSS* 1 (1956), pp. 60-62.

2. The legal implications in these two cases would appear to be in the sphere of public law rather than of private law. The authors also refer to other, less strictly legal, uses of the phrase 'bone and flesh' in Gen. 2.23 and 2 Sam. 19.14.

Jacob is the junior partner. At the end of the month, however, Laban ends the relationship. As the authors point out, a literal translation of v. 15 would be: 'Are you my brother? Shall you serve me for nothing?' There are therefore two rhetorical questions, the answer to both of which is negative: You are not my brother; you shall not serve me for nothing.[1]

For the first month then, uncle and nephew voluntarily enter into a relationship of brotherhood. Although the junior partner, Jacob can look forward to some share of the total estate. Laban, however, changes his mind and repudiates the partnership, replacing it with the status of employer and employee. He is able to do so unilaterally precisely because it is a contractual partnership, an *adoptio in fratrem*, and not the natural partnership of undivided heirs.

The existence of an undivided inheritance may be indicated in the biblical narratives even where the technical expression 'dwelling together' does not appear. In his pursuit of David, King Saul comes to the city of Nob, whose priests had given David temporary shelter. According to 1 Sam. 22.11-16:

> The king sent for the priest Ahimelech son of Ahitub and for all the priests belonging to his father's house at Nob and they all came to the king. Saul said, 'Listen to me, son of Ahitub. . . why have you and the son of Jesse conspired against me. . . ? Ahimelech replied: 'Let not Your Majesty find fault with his servant or with any of my father's house, for your servant knew nothing of all this'. But the king said, 'You shall die, Ahimelech, you and all your father's house'.

And v. 19 informs us that Saul's Edomite mercenary 'put Nob, the town of the priests, to the sword: men and women, children and infants, oxen, asses and sheep'.

It appears from this account that Ahimelech, son of Ahitub, is the head of a family of priests. But it is not called, as we would expect, Ahimelech's house; rather, it is explicitly referred to as 'his father's house'. The question then arises why his father, as head of household, does not appear in the narrative and is not called to account by Saul.[2]

1. 'Jacob's Reception', p. 61.

2. Nor in the earlier account of David's stay at Nob, where Ahimelech has the authority not only to give him shelter but also Goliath's weapons which were stored with the priests (1 Sam. 21.2-10).

It is possible that like Joseph in Egypt, Ahimelech has a position senior to his father by virtue of his public office. But there is nothing in the Bible to suggest that aged priests went into retirement in favour of their sons. Eli, the priest at Shiloh, was aged and infirm, and it was his sons who administered the sacrifices, but when God promises punishment for the latters' deeds, it is to Eli that he speaks, and it is upon Eli's house that it is to fall.[1] We would suggest, therefore, that the father of Ahimelech, Ahitub, is dead, but that his house still survives because it is undivided, and Ahimelech bears responsibility because he is the administrator of the undivided estate.[2] Priestly offices were regarded in law as property exactly the same as family land,[3] and would be even more suitable for common ownership, since they involved collegial duties and a theoretical share of temple income. Note that Saul's collective punishment of the house for

1. 1 Sam. 2.32-33 (although MT is somewhat corrupt: P.K. McCarter, *I Samuel* [AB; New York: Doubleday, 1980], pp. 88-89). In v. 34 the victims are specified as Eli's two adult sons. The terminology is complicated by the fact that the narrative also wishes to hint at the later fall of the Elide dynasty, in the form of the slaughter of the priests of Nob (1 Sam. 22.11-23) and the expulsion of Abiathar (1 Kgs 2.26-27, where a gloss refers to the 'house of Eli', i.e., of the *dynasty* of Eli as eponymous ancestor: see Gottwald, *Tribes*, p. 287). Thus in v. 31 future punishment is decreed upon the *seed* of both Eli and his father's (i.e. ancestor's) house and in v. 35 upon the *remnant* of his house, while in 3.13 his house is judged 'for ever'. The punishment is contrasted with God's earlier favours to the house of Eli's father, identified as the first priest in the wilderness (vv. 27-28), whom we thus understand to have been Moses: see McCarter, *I Samuel*, pp. 91-93.

2. Other possible references to undivided heirs are Judg. 9.5; 11.1-7; and 16.31. In 1 Kgs 18.18, Elijah tells Ahab 'you and your father's house have. . . followed the Baalim'. Ahab's father, Omri, is of course dead, but the phrase refers back to the activities of Omri and his family during the latter's lifetime (cf. 1 Kgs 16.25-26). It does not, therefore, refer to an undivided household. On the other hand, Num. 18.1 raises intriguing possibilities: 'The Lord said to Aharon: "You and your sons *and your father's house* with you shall bear the sin of the sanctuary, and you and your sons with you shall bear the sin of your priesthood"'. Is there a veiled allusion to Aharon's brother Moses in the first reference to the father's house? Cf. F. M. Cross, *Canaanite Myth and Hebrew Epic* (Cambridge, MA, 1973), pp. 194-98.

3. Josh. 13.33. The tribe of Levi receives the priesthood as their inheritance share instead of land. In Mesopotamia, priestly prebends are bought and sold like land. See, e.g., *ANET*, pp. 543 (no. 6) and 547 (no. 20).

treason is in direct contrast with the principles laid down in MAL A 2 and B 3 in the same case.

The patriarchal narratives provide more information on the selection of one of the co-heirs as administrator. We learn from Gen. 35.22 that Reuben, Jacob's first-born son, had intercourse with his father's concubine, Bilhah. For this offence, he is stripped of the status of first-born. Jacob informs him (Gen. 49.3-4):

> Reuben, you are my first-born, my strength and the first of my vigour, exceeding in pride, exceeding in power, boiling over like water. You shall not have preference (*twtr*), because you went up into your father's bed—you profaned my couch. . .

What is meant by 'preference' here? The basic right of the first-born was to receive a double share of the inheritance.[1] That right is transferred to Joseph, whose two sons Ephraim and Menassah each receive a full heir's share (and thus the equivalent of a double share for Joseph) when the tribes of Israel divide up the Promised Land.[2] Nonetheless, Joseph does not achieve seniority over his brothers thereby, at least within the family circle. It is Judah who is selected for the role of elder brother by Jacob in place of Reuben, for in addressing his sons on his death-bed, Jacob says to Judah (Gen. 49.8), 'the sons of your father shall bow down to you'. In our view, this refers to the right to administer the paternal estate while still undivided, which would normally have been assigned to the first-born as the obvious person to retain the authority of head of household. It is true that the reference is essentially to the political pre-eminence of the tribe of Judah, but since the metaphor of family relations between individuals is being used, Jacob's statement must have a function within the system of family relations as well, just as the decline of the

1. Deut. 22.15-17.

2. Josh. 14.4; 17.14-18. The transferral of the first-born's share from the son of a hated wife (Leah) to that of a loved wife (Rachel) would prima facie appear to contravene the rule recorded in Deut. 22.15-17. But it is legitimate here, because the motive was not Jacob's relationship with his wives, but the sin of his first-born son against him. In Gen. 48.5 Jacob confirms his preference for Joseph by giving the latter's sons Ephraim and Menasseh equal shares with their uncles. T. Frymer-Kensky (*BA* (1981), p. 214) sees this act as adoption, but if it were adoption, the grandchildren would inherit alongside their father Joseph and not instead of him.

tribe of Reuben is depicted as a legal penalty on an individual.[1]

The impression given by Jacob's words is of a tyrannical position, controlling the co-heirs as much as their property, or perhaps because of the control over their property. It is confirmed by the story of Jacob and Esau, where the position of administrator is transferred under less auspicious circumstances. Jacob, Esau's younger brother, having purchased Esau's right to an extra inheritance share (his 'first-born right', *bkrh*: Gen. 25.27-34), subsequently tricks their father Isaac into giving him the 'blessing' intended for Esau, which includes the phrase (Gen. 27.29), 'Be lord over your brothers and let your mother's sons bow down to you...' Isaac's statement is a prediction of political events, it is true, but again it must also have a function within the sphere of family relations, namely to assign legal rights to an individual.[2] The rights in question are those that would normally accrue to the first-born, as is stressed in the narrative: the younger son is dressed in the clothes of the elder (v. 15) and he announces himself to his father as 'Esau, your first-born' (v. 19). Esau's right to the extra inheritance share, however, has already been purchased from him by Jacob for a bowl of lentil soup (Gen. 25.27-34). As in the previous case, whose language it parallels, the right in question is in our view the administration of the undivided inheritance. After Isaac's death, it is Jacob who will assume the position of head of household in place of the natural candidate, Esau.

In this case, we are directly informed that the position is only temporary, since the blessing that Esau ultimately receives by way of compensation includes the phrase (27.40):

> You shall serve your brother, but it shall come to pass that when you rebel you shall cast his yoke from off your neck.

A legal right, having been assigned, cannot (as far as the narrative is concerned) be annulled: it can only be qualified by another right. It may seem strange to speak of a future rebellion in such terms, but if we remain with the metaphor, rather than with the political situation that it is supposed to indicate, we will see that it follows an appro-

1. On the political decline of the tribe of Reuben, see F.M. Cross, 'Reuben, First-Born of Jacob', *ZAW* 100 (1988) Suppl., pp. 46-65.

2. Cf. E.A. Speiser on the legal significance of Isaac's deathbed declaration (*Oriental and Biblical Studies* [Philadelphia, 1967], pp. 89-96).

priate legal logic. Throughout the patriarchal narratives there are many substantive legal rights and duties, but no mention of a system of courts. It is assumed that rights and duties are enforced by self-help. In such a system, the difference between self-help and an unlawful act is determined by the legitimacy of the right being enforced in this manner. The right that Isaac bestows on Esau is the legitimation of his ultimate rebellion, which thus sets a term on the legitimacy of the right that Jacob received.

Esau is unsatisfied with the result, and contemplates murdering Jacob as soon as their father has died (27.41). Paradoxically, by this reaction Esau shows that he regards himself as legally incapable of rejecting Jacob's rights. It would also appear that he has no right, short of rebellion, to insist on a division of the inheritance. Indeed, the restraints on division may have been a motive for Jacob (or, rather, his mother) to ensure by all means fair or foul that he be appointed administrator of the inheritance after he had obtained the extra share of the first-born. For if Esau, as administrator, could defer a division indefinitely, Jacob's putative double share of the divided estate would be of little use to him.

Finally, the only legal text in the Bible that deals with undivided inheritance is Deut. 25.5-10, which uses the technical term 'brothers dwelling together' as the context of the levirate law, where it is a condition for the applicability of the levirate. The law has been discussed in detail in a previous chapter and will not be repeated here, but from the perspective of this study it is worth noting the persistence of the state of indivision. The levirate may arise when the father is still alive, as is Judah in Genesis 38, because his sons, although married, are still living in his undivided household. Where that household is artificially continued after his death, the levirate will also continue to apply, as in the Deuteronomic law. But in the book of Ruth, we see how the state of indivision, once attached to a parcel of family land, remains with it unless and until the land is divided, whatever its interim ownership. Elimelech sold the land while his two sons were still living in his undivided household and departed for Moab, where all three died without a division having taken place. Any such division would have been ineffective, since the land was no longer in the family's hands, and its undivided character might equally have remained a matter of indifference were it not for the fact that it had

been sold under constraint, at a time of famine, and was therefore still subject to redemption by any surviving relative. The redeemer derives his right to redeem from his status as heir of Elimelech and thus by redemption acquires the status of an undivided heir—the surviving co-heir of Mahlon and Chilion—to whom all the incidents of indivision attach, including of course the duty of levirate.

As a postscript to the Near Eastern material, the Law Code of Gortyn,[1] from Crete and dating approximately to the 5th century BC, contains a provision on division of the inheritance. According to V.28-34:

> If some of the heirs[2] wish to divide the inheritance while others do not, the judge shall order that all the property shall be in the posession of those who wish to divide until they divide it.

Although the dispute over division has come before the court, it would seem on a plain reading of the text that the Cretan judge has no power to order an actual division if there is no consensus among the parties. By putting it into the hands of those who wish to divide, the law seeks to achieve the same indirectly, since the recalcitrant heirs can only be sure of receiving their fair share of income from the property by agreeing to a division.

Summary

Certain features of the state of undivided ownership emerge from the evidence of the sources.

1. The action of a single co-heir in principle incurs legal obligations for all the others, whether that action lies in contract, as in Gaius and CE 16, or in delict, as in MAL B 2 and 3 and the case of the priests of Nob.
2. Although ownership of the land was common, its use need

1. Ed. by R. F. Willetts, *The Law Code of Gortyn* (Berlin, 1967). Like the Roman Twelve Tables, it shows signs of Near Eastern influence. See M. Mühl, 'Untersuchungen zur altorientalischen und althellenischen Gesetzgebung', *Klio* Beiheft 29 (1933), pp. 77-78.

2. *epiballontes*. On the meaning of this term, see S. Avramovic, 'Die Epiballontes als Erben im Gesetz von Gortyn', *Zeitschrift der Savigny-Stiftung* 107 (1990), pp. 363-70.

not be. Abuse of rights to the produce of the land could lead to conflicts between the co-heirs, as in MAL B 4 and the case of Nefer-abu in Egypt, which required resolution by litigation, although in the case of Abraham and Lot an amicable settlement was reached.

3. One solution to the problem of managing communal land, which is found in Egypt and Israel, was to appoint a single co-heir as administrator. Problems would still occur if the administrator was himself corrupt, as in the case of Nefer-abu, or his mode of appointment was, as in the case of Jacob. The role of administrator would normally fall upon the eldest son.
4. The co-heirship of brothers ended with division of the inheritance. Ideally, this would take place by mutual consent, as in the case of Abraham and Lot. In the absence of mutual consent there is some evidence that it is difficult for a single heir to obtain a division: MAL B 4, the case of Esau and Gortyn V.28-34. Only in the later sources from the Hellenistic period onwards do we find division without mutual consent, but still requiring a court order (Gaius D.10, 2, 1; Hermopolis Code VIII.31). The contemplated legitimate rebellion of Esau may have been the equivalent of litigation to dissolve the co-heirship. His right to dissolve, however, was based on a special power granted him by the testator; he had no inherent power to dissolve.
5. The natural institution formed by brothers could be imitated by strangers seeking its legal benefits, as explained by Gaius and illustrated by documents of *adoptio in fratrem* from Ugarit and Elam and possibly the partnership of uncle and nephew in Gen. 13.1-6 and 29.14-15. The Elamite sources show that the contractual arrangements could introduce a certain flexibility into the co-ownership: it could be confined to only part of a partner's assets. Dissolution of this type of partnership followed the rules of adoption rather than of natural co-heirship.
6. Finally, the undivided inheritance gives rise to a singular institution in biblical law, but one entirely within the logic of its rules. Common ownership means that succession is by

survivorship, not inheritance. If an undivided co-heir dies without a son of his own to step into his place under the principle that 'brotherhood is brotherhood and sonship is sonship', his share of the inheritance would be deemed never to have accrued to him. By a legal fiction, the levirate duly provides him with the necessary offspring.

Chapter 7

The Dowry

In most traditional societies, the dowry is an important social institution, the inevitable accompaniment to all but the poorest of marriages. It is somewhat surprising, therefore, that the dowry receives little mention in the Bible. The term for dowry, *šlḥym*, occurs twice or possibly three times in the whole corpus.[1]

The reason seems to lie in the very centrality of the institution: for the biblical authors the dowry was a common, everyday thing; it needed mention only in circumstances that made it unusual. And even where it was a significant factor, there was no need for express mention; so familiar were the workings of the dowry to the contemporary audience that its presence in the background, albeit vital, could be knowledge assumed in the reader or indicated by the slightest allusion.

Reconstruction of such knowledge would be impossible were it not for the information now available from Israel's neighbours. While its literary sources are as reticent on the dowry as their biblical counterpart, the ancient Near East furnishes a wide selection of the most banal, everyday sources, such as economic and private legal documents, where the dowry figures prominently.

By placing the biblical data against the background of the ancient Near Eastern institution as a whole, its few, isolated details can be seen to be part of a coherent pattern, and the presence of the dowry is revealed in passages where it hitherto played an entirely hidden role. Indeed, the biblical material can at times even provide useful additions to our understanding of the wider institution.

Throughout the ancient Near East, the dowry was property assigned to a bride and brought with her into her husband's house upon

1. 1 Kgs 9.16; Mic. 1.14. For Exod. 18.2, see below.

marriage.[1] Its content was typically moveables: clothing, jewellery, furniture, kitchen utensils and personal servants. In richer households, general slaves and livestock might be included; the rarest item was land, which was reserved rather for the male inheritance.[2] The dowry list of a well-to-do bride from Sippar in the Old Babylonian period[3] reads as follows:

1-2	1 female slave. . .1 female slave Sharrat-Sipparim-x
3-6	3 shekels of gold in her ears, 1 shekel of gold about her neck, 2 silver rings weighing 4 shekels, 4 silver rings weighing 4 shekels.
7-9	10 garments, 20 turbans, 1 *i'lum*-garment, 1 tunic, 1 (leather) *marinum*.
10-11	1 ox, 2 three-year-old cows, 30 sheep, 20 mina of wool.
12-16	1 copper kettle of 40 litres capacity, 1 millstone for *isqūqum*-flour, 1 millstone for barley-flour, 1. . . bed, 5 chairs.
17-21	1 hairdresser's basket, 1 *nusḫum*-basket, 1. . . basket, 1 basket with latch (?), 1 'broad' basket, 60 litres of oil, 10 litres of good oil in one jar.
22-29	1 'head' table, 1. . . table, 2 combs for wool, 3 combs for the head, 3 small spoons, 2 loom-beams, 1 box full of spindles, 1 small pot-rack.
30-31	1 woman Sha-Tashmetum (?) her sister, Qishti-Ninshubur.
32-35	All this is the dowry of Liwwir-Esaglia, *nadītum* of Marduk and *kulmašītum*, daughter of Awil-Sin,
36-39	which her father Awil-Sin son of Imgur-Sin has given to her and has caused to enter the house of Utul-Ishtar *šangûm* of Ishtar son of Ku-Inanna for his son Warad-Shamash.

As can be seen from this document, the dowry was usually given by the bride's father. It could also be provided by the bride's mother with property from her own dowry,[4] or by other members of the bride's family.[5] It could be supplemented with gifts from the husband

1. For a survey of the cuneiform sources, see 'Mitgift', in *Reallexikon der Assyriologie*, 8 (forthcoming). On the Old Babylonian period, see Westbrook, *Marriage Law*, pp. 89-100; on the neo-Babylonian period, see M. Roth, *Babylonian Marriage Agreements 7th-3rd Centuries* BC (AOAT, 222; Kevelaer, 1989), pp. 7-9.

2. Paradoxically, the extant dowry lists often include land, precisely because its value made the drafting of a written record advisable.

3. BE 6/1 84:1-39.

4. E.g. TuM 2-3 2, edited by M. Roth (*Marriage Agreements*, no. 24b).

5. E.g. Roth, *Marriage Agreements*, no. 32; cf. E. Kraeling, *The Brooklyn*

(or his father),[1] and where lacking could be supplied entirely by the husband. In CT 48 51 the groom takes a fatherless bride from her mother and brothers 'for marriage, and for clothing and hatting her'.[2]

The dowry might be assigned to the bride before the marriage, and some items such as personal clothing or jewellery[3] placed in her possession in advance, but normally it would accompany her upon her entry into the groom's house. There it would be subsumed in her husband's assets. Theoretically, the wife remained the owner, but only as the beneficiary of a fund, since she was entitled to its return or restoration upon termination of her marriage. Nonetheless, the wife would have practical control of many of the dowry items during marriage, such as kitchen utensils, personal clothing and personal slaves, because of the very nature of those items and of the wife's role in the household.

A particular sub-division of the dowry was *melug*-property, a term found in Mesopotamian texts (Akk. *mulūgu*), at Ugarit (*mlg*), and reappearing later in the Mishnah as *mlwg*.[4] From the mishnaic evidence it would appear that *melug* is specific property which must be returned to the wife *in specie* upon termination of the marriage. The most typical item of *melug* was slaves, of whom the Mishnah states: 'if they die, they die to her account; if they increase in value, they increase to her account' (*Yeb*. 7.1.). There are thus likely to have been considerable restrictions on the husband's dealing with such property, if indeed he had control of it during the marriage.

Another component of the dowry, but with a more independent existence, was the special supplementary gift often provided by the husband at a later stage in the marriage, most probably after the marriage had produced issue. It could include land, and took the form of a *donatio mortis causa* to which the wife would be entitled from her husband's estate upon its division, if she survived him.[5]

If the wife survived termination of the marriage, her dowry was in

Museum Aramaic Papyri (New Haven, 1953), no. 7.

1. CH 150, 171b; MAL A 29; NBL 12.
2. Lines 7-8: *ana aššūtim u mutūtim ana labšūssa u aprūssa*.
3. See MAL A 25-6 (*dumāqū*).
4. B. Levine, 'Mulūgu/Melûg: The Origins of a Talmudic Legal Institution', *JAOS* 88 (1968), pp. 271-85.
5. CH 150, 171b, and see, e.g., CT 6 38a (trans. Westbrook, *Marriage Law*, p. 118).

principle (subject to certain conditions that will be discussed below) available to her as the means of her maintenance for the rest of her life. After her death it devolved upon the children of her own body, thereby excluding, *inter alia*, her husband.[1] Let us now see what traces of this pattern can be discerned in the Bible.

Content

Slaves

In Gen. 29.24 and 29 Laban gives his daughters Leah and Rachel each a personal servant on the occasion of their marriage. There is little difficulty in interpreting these gifts as dowry. The same status may then be presumed for Sarah's maid Hagar (Gen. 16.2-3) and Rebecca's nurse (24.59) and servant-girls (*n'rtyh*, v. 61), even though it is not expressly stated how they were acquired.

Jewels and Clothing

In Ezek. 16.10-12 God gives his ward, Jerusalem, clothing and jewellery upon her reaching puberty:

> I clothed you with embroidered garments, and gave you sandals of leather to wear, and put linen upon your head, and dressed you in silks. I decked you in jewellery and put bracelets on your arms and a chain around your neck. I put a ring in your nose, and earrings in your ears, and a fine crown on your head.

The gift is not an act of disinterested generosity, but takes place on the occasion of a metaphorical marriage between God and Jerusalem:

> [I] saw that your time for love had arrived. So I spread my robe over you and covered your nakedness, and I entered into a covenant with you by oath[2]—declares the Lord God; thus you became mine (v. 8).

1. See Westbrook, *Marriage Law*, pp. 92-93.

2. M. Greenberg (*Ezekiel 1-20* [AB, 22; New York, 1983], pp. 277-78) regards the oath as intrusive to the metaphor, since the declaration constitutive of marriage is not an oath. But the marriage contract which accompanied the marriage, like any contract, would have been confirmed by an oath, which is therefore appropriate here. The contract would normally be between groom and bride's parents, but because the bride is an orphan, and therefore *sui iuris*, it is here made with the bride herself.

We may therefore conclude that the gift constitutes a dowry.[1] In this case it is not the parents who provide the dowry, but the groom. As we have seen from the ancient Near Eastern evidence, the groom can replace the parents in this respect, and the circumstances here are particularly appropriate, since the bride is a penniless orphan and the groom her guardian.[2]

In Gen. 24.48-52, Abraham's servant concludes on his behalf a marriage agreement with Laban and Bethuel. As soon as the contract is concluded, the servant gives objects of silver and gold and clothes to the bride, Rebecca (v. 53). In terms of dowry, therefore, these items are a supplementary gift by the father-in-law. Anbar has compared them to the mention of items of jewellery in a group of Mari texts concerning the marriage of Yasmah-addu, king of Mari, to the daughter of the king of Qatna.[3] A small part of the betrothal-payment (*terḫatum*) payable by the groom's father, Shamshi-Addu of Assyria, is to be made into jewellery for the bride. Durand has further compared the latter gift with the custom recorded in the Middle Assyrian Laws of the groom bestowing jewellery (*dumāqī*) upon the bride, which apparently took place prior to the bride's entering the groom's house.[4]

A less obvious reference to the dowry occurs in Prov. 31.10-31, which recounts the virtues of a 'woman of valour'. The passage begins:

> A woman of valour who will find?
> Her price (*mkrh*) is far beyond rubies (*pnynym*).

1. As noted by Greenberg, *Ezekiel*, p. 279.

2. M. Malul ('Adoption of Foundlings in the Bible and Mesopotamian Documents', *JSOT* 46 [1990], pp. 97-126) argues that the foundling is adopted by God. It is true that the circumstances are the same as those that accompany adoption, but no adoption formula is used (the expression 'in your blood, live!' cannot be pressed into service as one) and it would be out of the question for a father, even an adoptive father, to marry his own daughter. Malul regards vv. 1-7 and 8-14 as being two different metaphors: adoption and marriage. But the entire chapter is an integrated whole with the single metaphor of a wanton wife; contradictions cannot be avoided by artificially dividing it into self-contained units.

3. M. Anbar, 'Les bijoux compris dans la dot du fiancé à Mari et dans les cadeaux du mariage dans Gn. 24', *UF* 6 (1974), pp. 42-44.

4. J.M. Durand, 'Les dames du palais de Mari', *MARI* 4 (Paris 1985), pp. 403-405.

These verses have caused embarrassment to commentators, who would deny any idea that a wife has a price like a commodity. The problem is that a payment for the bride is customarily made by the groom to the bride's father upon betrothal, the *mhr* (e.g. Gen. 34.12; 1 Sam. 18.25), which would thus constitute the bride's 'price' if she were so regarded. According to Plautz, then, the word *mkrh* is to be translated 'her value', but the value in question related not only her *mhr* but also to the wider notion of her worth as a human being.[1]

In our view, the woman's financial value is at issue, and in a strictly mercenary fashion. That value, however, does not relate to the *mhr*. The latter, even if not strictly to be regarded as the bride's price, is still a payment, and would normally be made with an accepted medium of exchange, such as precious metal, or possibly grain or livestock. *pnynym*, whether they be rubies or some other gem,[2] would not have been associated with the means of payment but rather, being an item of jewellery, with the dowry.

It is here that the mercenary aspect of Israelite marriage lies, for a wife was indeed regarded as having a financial value—not in her person, but in the size of her dowry. The virtues of the woman that are vaunted by this passage are her thrift, industry and business acumen, which gain for her husband wealth and a place among the local burghers. The message of the text is that a wife with such personal qualities is in the long term a more valuable match—in financial terms—than one with a rich dowry.

Land

Reluctance to give land as dowry derives both from its reservation for the male inheritance and from the practical difficulty that it cannot follow the bride to her new home. There are, however, ways of overcoming the problem.

First, if one is rich enough, practical difficulties are of less importance. The peasant farmer needs a minimum area of land for his sustenance and he needs to be reasonably near his land; the wealthy landowner will have surplus land, and can rely on others to farm it

1. W. Plautz, 'Die Form der Eheschliessung im Alten Testament', *ZAW* 76 (1964), pp. 313-14.

2. Other common translations are 'pearls', 'corals': Koehler Baumgartner (3rd edn), p. 891. LXX: lithos, 'precious stone'.

for him. After God decides to end Job's suffering and restore his fortunes, the size of his renewed wealth is given emphasis by the statement that Job gave his daughters as well as his sons portions of land (42.15).

The practical difficulty of propinquity was neatly solved in a different way by the Pharaoh in 1 Kgs 9.16. Rather than give a piece of Egyptian territory to his daughter on her marriage to King Solomon, he sacked the Canaanite city of Gezer, which lay on the border of Solomon's kingdom, in order to provide her with a suitable dowry. Clearly, this solution was not available to the ordinary father. A similar device, however, was employed in the early second millenium by the Assyrian king, Shamshi-Addu, who had been contesting control of the Rania valley with the Gutian king, Indushe. Shamshi-Addu proposes a peace treaty with Indushe, to be sealed by the marriage of his daughter to Indushe. As a further incentive Shamshi-Addu offers by way of dowry[1] the territory of Shusharra, a vassal kingdom of his that lay at the entrance to the valley.[2]

Another solution is adopted in the case of the daughters of Zelophehad (Num. 36). Having been allotted their father's share of the Promised Land, they are obliged to marry their cousins—the sons of their father's brothers—thus keeping the land geographically as well as legally within the confines of the *mšpḥh*. Their husbands' landed inheritance would have been contiguous to their own shares.

A fourth example of land being given occurs in the conquest narrative (Josh. 15.18-19 = Judg. 1.13-15), when Achsa, daughter of Caleb, who had apparently been assigned part of the Negev as her dowry upon marriage to Othniel, obtains from her father the appurtenant water sources in addition. The problems of giving land as dowry are not addressed.

The Donor

From the texts discussed above, it can be seen that the most common donor is the bride's father, as would be expected.[3] In one case, Gen. 24.53, the groom's father, through his representative, contributes to

1. ARM 2 8.13-14 *ana šarrākūt mārtīya*.
2. M. Anbar, 'Note on 1 Kgs 9.16', *Shnaton* 9 (1985), p. 233 (in Hebrew).
3. Gen. 29.24-29; Josh. 15.18-19; 1 Kgs 9.16; Job 42.15.

the dowry, but is not the main donor, whereas in Ezek. 16:10-12, it is the husband who gives his bride a dowry and is undoubtedly the sole donor. An example of a supplementary gift by the husband to his wife who has provided him with issue is furnished by Jer. 3.19: 'How I will place you among the sons, I will give you the finest land, the choicest inheritance of all nations!'

When Given

In Gen. 24.53 Rebecca receives Abraham's contribution to her dowry after conclusion of the marriage contract. She had already received some items from Abraham's servant (v. 22), but they were as a reward for her watering his camels, although they would undoubtedly have been incorporated into her dowry. Rebecca is also mentioned as taking other dowry items, namely personal slaves, with her on her departure (vv. 59, 61). It is logical to assume that she received her whole dowry at this point, the servants being singled out for special mention, as her wedding was to take place in a distant land, where she would remain.

In Ezek. 16.10-12, the dowry is also given after conclusion of the marriage contract (v. 8), but apparently on the occasion of the wedding ceremony (v. 9),[1] as it constitutes finery that the bride wears (v. 13). Likewise in Gen. 29.24, 29, Laban's gift of a servant to each of his daughters takes place apparently on the very night of the wedding. Tosato assumes that these servants comprise the whole of their dowries,[2] which seems a trifle miserly for a man of Laban's wealth. It would be reasonable to assume that the single servant was only one item out of a larger dowry, singled out as in the case of Rebecca, in this instance because of the genealogical significance that those servant-girls were later to have. Subsequent events, however, suggest otherwise.

When asked by Jacob whether they are prepared to flee with him, Rachel and Leah agree, complaining bitterly that they have nothing to expect from their father (31.14-15):

1. Anointing the bride with oil is a symbolic act of marriage: see M. Malul, *Studies in Mesopotamian Legal Symbolism* (AOAT, 221; Kevelaer, 1988), pp. 161-79.

2. A. Tosato, *Il Matrimonio Israelitico* (AnBib, 100; Rome, 1982), p. 98.

> Do we have yet an inheritance-slave in our father's estate? Have we not been considered foreigners by him, for he has sold us and consumed our price.[1]

Normally the dowry accompanies the bride into her husband's home and helps the young couple to establish a household. But where, as in the case of Jacob, husband and wife are still living in the undivided household of the wife's father, there is little rationale in separating out the dowry, even if it had been previously assigned.[2] Rachel and Leah have thus received nothing (or next to nothing) and express little hope of receiving anything in the future from their father, who clearly finds it convenient to retain Jacob in his household and save on the dowry.[3] The daughters are thus prepared to flee with what little they have rather than wait upon a hopeless prospect.

Furthermore, the reference to selling them and consuming their price may be to an extra measure of miserliness by Laban, in respect of the dowry. Several commentators have linked this reference with the custom well attested in cuneiform sources of returning the betrothal payment (*mhr*) to the husband as part of the dowry.[4] On this interpretation, v. 15 may be taken to infer that the fruits of Jacob's labour, which were the daughters' *mhr*, were not so assigned by Laban but consumed by himself—like a real price, as the daughters sarcastically remark. And perhaps this was sufficient indication to them of what they could expect from their father.

Another husband who lived in the household of his father-in-law

1. Lit., 'silver'. A standard term for price: cf. Gen. 23.13.

2. Cf. R. Dussaud, 'Le mohar israelite', *CRAIBL* (1935), p. 148, who interprets *šlhym* as a parting gift and considers Laban's evasion to be in not letting the newlyweds depart.

3. The daughters' dowry rights are not to be confused with Jacob's own property, which is not part of his father-in-law's 'house'. As J. van Seters rightly points out ('Jacob's Marriages and Ancient Near East Customs', *HTR* 62 [1969], pp. 390-91), Jacob is not adopted by Laban, and therefore retains his own possessions as entirely separate from Laban's property and as rightfully earned by wages, not by inheritance. Daube and Yaron ('Jacob's Reception', pp. 60-62) suggest that for the first month Jacob was regarded as a member of the undivided household, but Laban's proposal that Jacob then work for wages amounted to a repudiation of his status as a member of the family.

4. M. Burrows, 'The Complaint of Laban's Daughters', *JAOS* 57 (1937), pp. 268-71, 276; M. Morrison, 'The Jacob and Laban Narrative in Light of Near Eastern Sources', *BA* 46 (1983), pp. 160-61.

was Moses, but for him provision of the dowry was less fraught with difficulty. We are told in Exod. 18.2 that Jethro 'took Zippora, Moses' wife *'ḥr šlwḥyh*, etc.', and brought her to Moses in the desert where he was encamped. To translate this phrase 'after he had sent her away' or the like makes little sense, not the least because it forces us to assume an incident hitherto unrevealed in which Moses had divorced his wife.[1]

Del Olmo Lete has therefore proposed connecting the phrase with the word *šlḥym* and translating 'with her dowry'.[2] He considers it perfectly reasonable to state that Jethro brought the dowry along with the wife and children, and so it is, but also a little surprising that express mention should be made of the dowry. Thus Childs rejects the suggestion as being out of context.[3] But the rationale is clear if the dowry was only given when the bride left her parental home to set up household with her husband, as Zippora was now—belatedly—doing. The phrase therefore is designed to illuminate the noble character of Jethro, in contrast to the miserliness of Laban.

Further evidence for the association between giving the dowry and the bride's departure from the parental home comes from the Exodus narrative. In Exod. 11.1 Moses is told by God that the Pharaoh *yšlḥ 'tkm mzh kšlḥw klh.*

A straightforward translation, as proposed by Coppens,[4] would be 'he shall send you out from here like his sending out a bride', but the phrase is usually translated along the lines 'he shall drive you out completely',[5] on the grounds that the context has nothing to do with a

1. *Mekhilta, ad. loc.* U. Cassuto (*Commentary on Exodus* [Jerusalem, 1967], pp. 213-14) assumes a tradition according to which Moses had sent his wife and his sons to her father's house, in order to be free of family responsibilities during his mission.

2. G. Del Olmo Lete, "*ahar šillûḥèhā* (Ex. 18,2)', *Bib* 51 (1970), pp. 414-16, arguing that the preposition *'ahar* can mean 'with', on the basis of Ugaritic parallels.

3. B.S. Childs, *The Book of Exodus* (OTL; Philadelphia, 1974), p. 320.

4. J. Coppens, 'Miscellanées Bibliques', *Bulletin d'Histoire et d'Exegèse de l'Ancien Testament* 13 (1947), pp. 178-79. See also R. Yaron, 'On Divorce in Old Testament Times', *RIDA* 4 (1957), pp. 122-24.

5. E.g. Childs, *Exodus*, p. 127: 'he will drive you out bag and baggage'; M. Noth, *Exodus* (OTL; Philadelphia, 1962), p. 84: 'he will drive you away completely'.

bride.[1] The simile of a father sending forth his daughter to her husband's house can be seen to be an apt one, however, when we consider that this would be the point at which the dowry would be handed over to her. The following verses—the so-called 'despoiling of the Egyptians'—concern the taking of property from the Egyptians by the Israelites prior to their departure. The property to be taken (items of silver and gold, plus garments)[2] and the explicit participation of women in the process, once again indicate a dowry.

Morgenstern, while adopting Coppens's translation, objects to the idea of the Pharaoh giving a dowry on the grounds that he would scarcely be regarded as playing the role of a bride's father towards Israel.[3] But the phrase is a simile and its tone is ironic: because they will leave laden with dowry-type property from the Egyptians, the Israelites' going out will resemble the departure of a bride more than an expulsion. The Pharaoh's uncharacteristic paternal role will be an unwilling, and possibly unwitting, one.

Status During Marriage

While the wife retained potential rights over her dowry during the marriage, it became a part of her husband's property. Its ambiguous status is illustrated by the remarks of Achsa, who in requesting from her father water sources to go with an earlier gift of land, states: 'You

1. Childs, *Exodus*, p. 130.
2. Exod. 3.22; 12.35.
3. J. Morgenstern, 'The Despoiling of the Egyptians', *JBL* 68 (1949), pp. 1-28 (p. 2). Morgenstern's own translation is 'as they send away a bride' and his interpretation literal. He envisages a complicated scenario in which the Israelite maidens departed dressed as brides in borrowed garments, not for a wedding but for a religious ceremony in the desert. Unfortunately, the parallel version in Exod. 3.22 states expressly that the items taken were to be placed on Israelite sons as well as on daughters. The mention of sons is no hindrance to a figurative use of the word 'brides', but it is fateful to a literal one. Another view is that of D. Daube (*The Exodus Pattern in the Bible* [London, 1963], pp. 55-61) who takes *klh* to mean 'slave-wife' and the Egyptians' gifts to be those owed a slave on his departure into freedom (Deut. 15.13). But *klh* (as opposed to *'mh*) has no connotations of slavery. Yaron ('Divorce') adduces Akkadian *kallatum*, 'daughter-in-law', who may in some contacts have a lowly status, but admits that its parallel in the Bible is *'mh* and not *klh*.

have given me the land of the Negev; now give me the springs...'[1] But as regards the original gift of land, she had in fact had to persuade her husband to request it of her father, which suggests that although the land was her dowry, it was the husband who would receive and exploit it.

More personal items would remain under the wife's control. Ezek. 16.16-18 describes to what misuse the faithless wife, Jerusalem, put her personal dowry:

> You took some of your clothes and made gaily-coloured shrines and played the harlot on them... You took your jewellery, of my gold and silver that I gave you, and made yourself male images and played the harlot with them. You took your embroidered garments and covered them...

Although bitterly upbraiding her for their misuse, God describes the dowry items as Jerusalem's, but whether full ownership or mere possession is meant is not clear. Eventually, God arranges to deprive the faithless wife of them, by having her lovers strip her in the process applicable to an adulteress (v. 39).

The references to personal slaves manifest clear control by the wife in the nature of full ownership, suggesting that such slaves belonged to the category of dowry called *melug* in other ancient Near Eastern sources. In Gen. 16.2-3; 30.3-4, 9, Sarah, Leah and Rachel all take the initiative in offering a personal servant to their husband as a secondary wife. But when Sarah becomes jealous of Hagar as a rival, she is able simply to tell Abraham to send her away, an order which Abraham feels obliged to obey, contrary to his own sentiments.[2] As far as Abraham was concerned, Hagar was his wife, and she is so called (16.3, *'šh*). Even marriage, therefore, could not overcome the ownership rights of the first wife in this kind of dowry property. Although at one point she is called Abraham's *'mh*—wife of slave-status (21.12),[3] she is Sarah's *špḥh*[4]—female slave. The dual status of the slave given as a wife is well expressed by the Old Babylonian

1. Josh. 15.16-19; Judg. 1.13-15.

2. Gen. 21.10-11. Earlier, he had felt obliged to hand Hagar back to her mistress for disciplining: 16.5-6.

3. Cf. Exod. 21.7-10. In Gen. 21.10 Sarah uses the term *'mh* contemptuously, rather than *'šh*, to emphasize her low status.

4. Gen. 16.1-3, 5-6, 8.

contractual formula: 'A is a slave to B (first wife); a wife to C (husband)'.[1]

Status After Marriage

If the marriage came to an end due to the husband's death, the widow was entitled to restoration of her dowry,[2] which then constituted her principal means of support for the rest of her life. A wife with a large dowry could thus live well as a widow, which was possibly the status of the mother of Micah in Judg. 17.14, who had eleven hundred shekels in her possession, to dispose of as she thought fit.

More frequently in the Bible, however, the widow is a symbol of poverty, who is forced to glean for her survival.[3] She may of course have had no dowry to begin with or, being in her husband's hands, it may have been dissipated during the marriage. Then again, her plight might be due to injustice, rather than simple poverty. The need to draw upon the husband's estate in order to reconstitute the dowry was an obvious source of friction between the widow and the husband's heir, which might lead to the widow being denied her share, even if the estate was adequate to bear it. The biblical terminology of oppression may allude to this state of affairs. The two main terms used describe different types of oppression.[4] *gzl* is to take away property without right, and has as its object householders,[5] brothers,[6] and the poor variously described,[7] but never the widow (or orphan). The widow appears as object only of the second term, *'šq*, which means to deny a person their rightful due, like the labourer his wages.[8] Thus Mal. 3.5 speaks of those who oppress (*'šq*) the hireling, the widow and the orphan, that is, deny them their rightful due.[9] This

1. CT 4 39a.9-11; CT 8 22b.5-6; CT 48 48.6-8. In none of these contracts, however, does the slave appear to have been acquired by way of dowry.
2. She might also receive a share of her husband's estate: CH 171b-172; NBL 12.
3. See F.C. Fensham, 'Widow, Orphan, and the Poor in Ancient Near Eastern Legal and Wisdom Literature', *JNES* 21 (1962), pp. 129-39.
4. See Westbrook, *Studies in Biblical and Cuneiform Law*, pp. 23-38.
5. Mic. 2.2.
6. Ezek. 18.18.
7. Isa. 3.14; Ps. 35.10; Prov. 22.22.
8. Deut. 24.14-15.
9. Cf. Jer. 7.6; Zech. 7.10.

distribution of terms may be a mere coincidence, but it seems to us indicative of the fact that the widow, like the orphan, stood at a disadvantage in contesting the deceased's estate with powerful interests in the *mšpḥh* who would be next in line to inherit.[1]

The position of the divorcee was more complicated. The legal systems of the ancient Near East distinguished between divorce with grounds and without grounds.[2] A man might divorce his wife at will merely by pronouncing the appropriate *verba solemnia*, but if he did so without grounds, he had to restore her dowry to her and pay her compensation in addition. The technical term for divorce without grounds—attested in Akkadian, Aramaic and Hebrew—is 'hate (and) divorce'.[3]

If, on the other hand, the husband had good grounds for divorce, he could do so without incurring a financial penalty and even keep the dowry. CH 141 mentions as good grounds actions by the wife such as accumulating a private hoard, dissipating household resources and slandering her husband. The Mishnah mentions immoral conduct, such as going out with her hair unbound, spinning in the street (which involved exposing herself), speaking with strange men or bathing where men bathe.[4]

This distinction in the financial consequences of divorce is the key to the mysterious prohibition on restoration of marriage in Deut. 24.1-4:[5]

> If a man takes a wife and marries her and she finds no favour in his eyes because he found an unseemly thing in her and he writes her a bill of divorce and puts it in her hand and sends her out of his house, and she leaves his house and goes and becomes another man's wife, and the latter hates her and writes her a bill of divorce and puts it in her hand and sends her out of his house or he dies, the latter one who married her: her first husband who sent her away may not take her as his wife again, after she had been made unclean to him...

The law describes three different ways of terminating a marriage:

1. Cf. the case of the Tekoan woman; 2 Sam. 14.1-7.
2. See Westbrook, *Marriage Law*, pp. 69-79; *idem.*, 'Prohibition', pp. 394-99.
3. Westbrook, 'Prohibition', pp. 399-403.
4. *Ket.* 7.6. The last example is from the Talmud (*b. Giṭ.* 90a).
5. The following is a summary of our earlier study of this passage ('Prohibition', note 51) in which previous scholarship is reviewed and other aspects of the text besides dowry are considered.

(a) by divorce, where the husband finds an 'unseemly thing' (*'rwt dbr*) in his wife; (b) by divorce, where the husband 'hates' his wife; (c) by death of the husband. The first marriage is ended by method (a), the second by either method (b) or (c). Widowhood and divorce for 'hate' thus have some factor in common which distinguishes them from divorce for unseemliness.

From our discussion of the fate of the dowry that factor becomes clear. The 'unseemly thing' which caused the first marriage to end in divorce was improper conduct by the wife. In divorcing his wife on good grounds then, the first husband profited by retaining her dowry. The two alternative causes for termination of her second marriage, on the other hand, have in common the opposite financial consequences: a widow or divorcee for 'hate' (i.e. without grounds) was entitled to restoration of her dowry (and also compensation from her husband's property). The wife may or may not have received a second dowry from her family or her second husband, but at least she will have received compensation from him. Hence it is her newly acquired property that lies behind the first husband's change of heart in wishing to re-marry his 'unseemly' wife, whom he had already relieved of her first dowry. It is an act of hypocrisy and unjust enrichment which the law intervenes to prevent. The dowry is thus, in part at least, the hidden factor that provides a logical explanation for the complicated circumstances to which the Deuteronomic law applies.

On the death of the widow or divorcee, the cuneiform codes stress that her dowry devolves exclusively upon the children of her body, excluding her husband or his children from another wife.[1] In Old Babylonian private legal documents recording incorporation of the betrothal payment (*terḫatum*) into the dowry the same principle is expressed by the phrase: 'her sons are her heirs'.[2] In taking some of their father's property when absconding with Jacob, his wives Leah and Rachel justify themselves with the argument that it is their unpaid dowry (Gen. 31.14-15), which they also define in terms of its special devolution:

> For all the wealth which God has taken away from our father—it belongs to us and our sons. . . (v. 16)

1. CH 162, 167, 174; MAL A 29; NBL 13.
2. BE 6/1 84; BE 6/1 101; CT 8 2a; CT 48 50. See Westbrook, *Marriage Law*, pp. 99-100.

Dowry and Inheritance

In surveying the evidence from cuneiform and biblical sources, scholars have frequently stressed that the dowry is an advanced form of inheritance.[1] The daughter receives her share of the father's estate upon marriage; her brothers must wait until their father's death for their shares. Functionally, this is certainly the case, but in legal terms there is a vital difference between the female dowry and the male inheritance. The male heir has a vested interest in a proportionate share of the paternal estate. He can only be deprived of that share for cause by a court order, and retains his rights under certain circumstances even when the property has passed into the hands of strangers.[2] The dowry, on the other hand, is a voluntary gift. Its character is expressed by the Akkadian terms *nudunnû* and *šeriktu*, both derived from verbs meaning 'to give' (*nadānu*, *šarāku*). There is no evidence that a daughter could sue her father or his heirs for a dowry, unless perhaps property had formally been assigned to her for that purpose,[3] or that there was any fixed proportion of the paternal estate that constituted a minimum entitlement. In a few special cases concerning priestesses, Codex Hammurabi does lay down proportions of the estate which the various priestesses, according to their rank, are entitled to take if not dowered in their father's lifetime (180-83), and in one case obliges a priestess's brothers to dower her 'according to the size of the paternal estate' (184: *kīma emūq bīt abim*). But the limited class to whom these provisions apply indicates that no such rule existed for the ordinary daughter entering a secular marriage.[4] The dichotomy between the functional and legal character of the dowry is well expressed by the complaint of Laban's daughters (Gen. 31.14-15). They refer to their dowry as an 'inheritance-share'

1. See A. Skaist, 'Inheritance Laws and their Social Background', *JAOS* 95 (1975), p. 243.

2. CH 168-69, and see the section 'Ownership and its Limits' in the Introduction, and Chapter 5.

3. As in CT 8 2a, an Old Babylonian document in which the girl's mother and brothers hand over her dowry which had earlier been assigned to her by her father (trans. Westbrook, *Marriage Law*, pp. 118-19).

4. Cf. CH 166, which obliges the co-heirs to allot the amount of a betrothal payment (*terḫatum*) to an unmarried brother from the paternal estate.

(*ḥlq w-nḥlh*), in part because, as we have seen, by remaining in their father's household they are eligible to receive it only upon his death, when the household is divided. But at the same time they despair of receiving it even then, if their father, as his conduct hitherto has indicated, has no intention of making a formal assignment. The idea that their brothers might be obliged to dower them does not, apparently, occur to the daughters. Without underestimating the powerful social factors that would normally ensure that a daughter would be dowered to the best of her father's ability, legally speaking she appears to have been at the mercy of her father, or of her brothers after his death.

On the other hand, there is repeated evidence from the earliest cuneiform records onwards that a daughter could receive an inheritance from her father's estate, whether as sole heir or dividing with the other heirs.[1] A daughter did not, therefore, lack the legal capacity to inherit. The closing remarks of an Old Babylonian letter from Sippar, however, have been cited as evidence of a daughter's incapacity, in that jurisdiction at least. AbB I 92:16-17 reads: *ap-lu-tum ṣe-ḫe-er-tum ù ra-bi-tum i-na* ZIMBIR[ki] *ú-ul i-ba-aš-ši*. Kraus originally translated: 'The institute of the younger and the eldest heir does not exist in Sippar', that is, referring to the custom of giving the eldest heir an extra inheritance-share.[2] Landsberger, however, rendered the above lines differently: 'There is no inheritance whatsoever (of women) in Sippar',[3] an interpretation followed by the *Chicago Assyrian Dictionary*:[4] 'there is no right to inheritance for daughters in Sippar, be they eldest or not', and by Ben-Barak, who states: 'This emphasises that in Sippar a daughter could not inherit her father's estate'.[5]

Even if Landsberger's translation is correct, its interpretation as a

1. D. Edzard, *Sumerische Rechtsurkunden des III. Jahrtausends* (Munich, 1968), no. 68 (pre-Sargonic); UET 5 110 (Old Babylonian); MDP 22 21 (Elam); D. Wiseman, *The Alalakh Tablets* (London, 1953), no. 7.

2. F.R. Kraus, *Altbabylonische Briefe*, I (Leiden: Brill, 1964), p. 71: 'Das Institut des jungeren und des altesten Erben besteht in Sippar nicht'.

3. See Kraus, 'Erbrechtliche', p.34: 'es gibt keinerlei Erbschaft (von Frauen) in Sippar', taking *šeḫertum u rabītum* as a *per merismum*.

4. A, Pt II, p. 178.

5. Z. Ben-Barak, 'Inheritance by Daughters in the Ancient Near East', *JSS* 25 (1980), p. 23.

general rule of law cannot be.[1] First, it contradicts documentary evidence from Sippar, where the term *apiltu*, 'heiress' appears[2] and where female heirs divide their inheritance in the same way as males.[3] Secondly, it is questionable methodology to attribute a broad statement of principle to a letter bearing a very specific message. The writer is seeking to assure the addressee, a woman living in Sippar, that another woman's claim to a share in a field of hers will fail and that she will receive damages for the loss caused her:

> Speak to Amat-Kallati: thus says Shamash-mushezib: 'May Shamash and Marduk keep you well! Concerning the field that you and Naramtani are disputing, I have sent a strongly-worded tablet of Tappatum to the burghers of Sippar. They will not divide the field between you until I come. When I come, I will bring you both before the judges of Sippar. They will hear the testimony of you both and will refer (the matter) to the Palace and it will compensate your loss. There is no inheritance, great or small,[4] at Sippar.'

It seems to me more sensible to give the words in question a sense specific to the case, namely that the *claimant's* inheritance does not extend to landed property in Sippar, even in the smallest quantity.

Under what circumstances, then, did a daughter acquire an inheritance, if it was not her inherent right? The most obvious is as a voluntary gift from her father.[5] While the dowry was normally given at the time of marriage, we have seen that it could be postponed, especially if the son-in-law entered the undivided household of his father-in-law. Furthermore, supplementary gifts could be made to the original dowry. If the father made such gifts *mortis causa*, then they would take effect as an inheritance-share of his estate.

Ben-Barak, however, points to a practice attested in several documents from Nuzi and Emar whereby a father adopts his natural daughter as a son (or male) and gives her an inheritance. According to

1. The words 'of women' are a gratuitous addition, based on the context, namely that the litigation is between two women.

2. E.g. CT 47 5:20.

3. CT 6 42b.

4. *ṣeḫertum u rabītum*, as adjectives qualifying the abstract noun *aplūtum* (inheritance) are more appropriately translated thus.

5. Documents of bequest from father to daughter are widely attested: e.g., Elam (MDP 22 16; 23 200; 23 285); Nuzi (HSS 19 1; 19 20; 19 51); Elephantine (Kraeling, *Aramaic Papyri*, no. 9).

Ben-Barak, only by being given the 'status of son or male' could the daughter obtain the legal status of heir, 'since the choice of the daughter was diametrically opposed to the values of the society, which did not accept the daughter as an heir, and to the conception that the head of the household, the *paterfamilias*, had to be a male'.[1] This analysis, however, confuses two different uses of the word 'status'. The status of heir is no more than one who has received an inheritance. The fate of that inheritance will then depend on the personal status of the recipient. 'Head of household' is a status in relation to other persons, which may exist even in the absence of inherited property. It depends rather upon marriage and the production of children. If a son receives an inheritance, it will become part of the household that he creates by marrying.[2] If a daughter receives an inheritance, it will be subsumed in the assets of the household that she enters by marrying. In other words, the female inheritance is treated as dowry and does not affect her status in the household.[3]

To return to the Nuzi and Emar documents, Paradise points out that in other documents from Nuzi, a natural daughter is made heir, sole or joint, without any special procedure.[4] We would add a Babylonian example where a woman was adopted as a daughter and given an inheritance, exactly in the same manner as in male adoption.[5] We

1. Z. Ben-Barak, 'The Legal Status of the Daughter as Heir in Nuzi and Emar' in *Society and Economy in the Eastern Mediterranean* (ed. M. Heltzer; Leuven, 1988), pp. 96, 97. K. Gross ('Daughters Adopted as Sons at Nuzi and Emar', in *La femme dans le Proche-Orient Antique* [ed. J.M. Durand; Paris, 1987], pp. 81-86) discusses the same documents, but proposes a more guarded (and ambiguously worded) hypothesis: 'if he had daughters only and wished to transfer to them the entire estate he had to invest them with the status of sons, or full heirs' (p. 86). Gross admits that this is a mere surmise, not a conclusion drawn directly from the documents under discussion, the purpose of which in her view was to attach the daughter's children to her father's lineage (p. 84).

2. Cf. CH 176 where a slave and his free wife create a house by marrying.

3. For evidence that female inheritance was regarded as dowry in the sources, see below.

4. J. Paradise, 'A Daughter and her Father's Property at Nuzi', *JCS* 32 (1980), pp. 190-91, esp. n. 12.

5. UET 5 96.1-10: 'Sin-rabi and Ishtar-ummi his wife have adopted (lit., 'established as a daughter') E'e daughter of Shu-lugaledurushurra. They have given to E'e daughter of Shu-lugaledurushurra, their daughter, a prebend in the temple of Lugaledurushurra for one month in the year, (and) $7\frac{1}{6}$ gin of houseplot, the

conclude that adoption as a son was not a necessary condition for a daughter to inherit, in these societies or elsewhere in the ancient Near East, and that the special clause in the documents in question must have had some other function.[1] While not an automatic heir, the daughter was within the circle of potential legitimate heirs, who did not need to be adopted as would an outsider to the family in order to be given an inheritanceshare.

The above discussion throws light on the isolated notice in Job 42.15 that Job gave his three beautiful daughters 'a (landed) inheritance among their brothers'. The reference is most probably to a gift *mortis causa*,[2] either of specific land or as a proportion of the estate. Moreover, in view of Job's inordinate wealth, the implication is that this inheritance was supplementary to the daughters' normal dowries.

In some of the Nuzi documents, the father made his daughter sole heir to his estate because he had no sons.[3] If the father failed to make such a bequest and died leaving daughters but no sons, a dilemma

inheritance portion of their son Shamash-iddinam...' At Nuzi, adoption as a daughter seems to have been employed exclusively for matrimonial purposes: Cassin, *L'adoption*, pp. 42-45, 299ff.

1. Paradise ('Daughter', pp. 193-98) considers that in the Nuzi documents it was to give the daughter extra protection against the claims of rival male heirs. We suggest that it may have been connected with special religious duties normally assigned to the male. (Cf. Gross, 'Daughters', p. 84). In Sumer 32 133 no. 2:24-5 (Nuzi) the daughter must mourn and bury her step-mother—an unusual duty. In *Studies Lacheman* (Winona Lake, 1981), no. 6:27-31 (p. 386) the daughters must 'revere my gods and my spirits'. In the two Emar documents the connection is closer. The clause in question reads: 'I have made my daughter PN female and male. She shall call upon my gods and my dead' (*RA* 77 [1983], no 1:6-8; no. 2:9-12, pp. 13-17). The fifth tablet cited by Ben-Barak (*Abr-Nahrain* 22 [1983-4], pp. 159-170) does not in our view contain the clause in question. Lines 6-10 read: ^{p}*a-gi-ši-me-ia* dumu-*ia* gal ù ^{p}*a-na-ni-šar-ri* dumu-*ia-ma* ^{f}*hi-in-di-*^{d}*ša-la-su* dam-*at* ^{p}*a-na-sar-ri ša a-na* dumu-*ti-šu e-pu-šu-ú-ni*. We would translate: Agi-shimeia is my elder son and Anani-sharri is my (younger(?)=TUR!) son; Hindi-shalasu is the wife of Ananisharri, whom I adopted...

2. Although since we are told that Job lived to the age of 140 and saw four generations (42.16), one wonders whether his sons or daughters ever managed to realize their inheritance.

3. E.g. HSS 19 20. The bequest is conditional on the father not producing a son. See Paradise, 'Daughter', pp. 190-91.

arose which provoked a similar legal reaction in sources several millenia apart.

The first source is an inscription of Gudea of Lagash, from the end of the third millenium:[1]

> In the house having no son as heir,[2] its daughter entered into its heirship.

The second source, from the early second millenium, comes from a Sumerian law code, a fragment that probably formed part of the Codex Lipit-Ishtar:[3]

> If a man dies and has no son as heir, the unmarried daughter [shall be (?)] his heir.[4]

The third source is the rule in Num. 27.8:

> If a man dies and has no son, you shall transfer his inheritance to his daughter.

The striking similarity of these three sources, drawn from societies with a common approach to inheritance, at first sight leads one to suppose a common thread of legal tradition, whereby the normal line of succession through male relatives is automatically altered in these special circumstances. Nonetheless, the reiteration of this rule and the purported circumstances of its creation in at least two of these sources lead us to doubt its automatic applicability, as does the practice attested in the cuneiform documents of fathers bequeathing their estate to an only daughter,[5] a precaution which her automatic succession should have rendered otiose.

The context of the first source is an inscription in which Gudea boasts of his achievements in establishing justice. In the lines immediately preceding (42-43), he states: 'The wealthy man did not oppress the orphan, the powerful man did not oppress the widow'. The reference is to the king's traditional role as protector of the weak from acts of oppression, not necessarily illegal, but calculated to deprive them

1. Cylinder B 7:44-6: é-ibila (DUMU.NITA$_2$)-nu-tuku/dumu-munus-bi ì-bí-la-ba.
2. According to Kraus ('Ebrechtliche', pp. 35-36), simply 'son'.
3. M. Civil, 'New Sumerian Law Fragments', in *Studies in Honor of Benno Landsberger* (Assyriological Studies, 16; Chicago, 1965), p. 4: UM 55-22-71 col ii 8'-11'.
4. In both cases DUMU.NITA, which can mean son or heir (ibila).
5. E.g. HSS 19 20.

of their just due.[1] The king intervenes in individual cases to effect equity where the normal legal system has failed. In this case, therefore, the orphan daughter receives her inheritance by special intervention of the king, possibly reacting to oppression by male relatives of her father who take his estate but deny her a dowry.

The terse formulation of the second source does not allow us to determine its applicability, but the extra condition that it imposes confirms that the female inheritance was indeed treated as nothing other than dowry. The married daughter, having already received her dowry, is excluded from benefiting a second time from the estate.

The biblical rule has as its context the story of the daughters of Zelophehad, from which it purports to originate (Num. 27.1-7). After Zelophehad had died without male issue, his daughters petition Moses and the other leaders for inheritance shares of land as if they were sons—in practice, the right to divide with the uncles as representatives of the deceased. A divine order grants their petition. The rule in v. 8 purports to be the *ratio decidendi* of that case, which is henceforth to have the authority of precedent. But the *ratio* is wider than the decision in that it omits two factors: the unmarried status of the daughters and the form of their claim as a special petition for exceptional treatment, not a claim for vindication of their rights against the nearest male relatives, their uncles.

The first factor is highlighted by its role as a condition in the earlier Sumerian law, and by the fact that in a sequel to the story (see below) it turns out to be of vital significance. We would therefore offer the tentative suggestion that the thread of tradition to which the biblical rule belonged was not one of automatic succession by only daughters. Succession in the absence of sons would in principle still be to the deceased's nearest male relatives. But a just ruler would entertain the petition of an unmarried daughter who was thereby being deprived of her dowry. If we have laboured the point, it is because it does have legal implications. Unlike a mere discretion in the ruler or his court of law, a rule of automatic succession would give the daughter a right in the inheritance in the absence of sons, thus effacing the main legal difference between dowry and inheritance. It would also ensure that the daughter always obtained land, the essence of the male inheritance.

The fact remains that in the biblical version, the petition was used as

1. See Westbrook, *Studies*, pp. 9-14.

a precedent for a rule of automatic succession. That rule, however, was qualified in one respect. In a sequel to the case in Numbers 36, Zelophehad's brothers counter-petitioned, pointing out that if the daughters married outside their tribe, the inheritance would be lost to the family—a matter of particular gravity because it comprised the initial allotment of the Promised Land. Moses thereupon (without recourse to divine ruling!) ordered that the daughters be allowed to marry only within their tribe, and they in fact marry their cousins, thereby ensuring that Zelophehad's estate passes to the descendants of his nearest male heirs.

The first point to be noted is that this account once again confirms that the female inheritance was treated as nothing other than dowry. Upon marriage, it will be subsumed in the husband's assets, a danger to be averted if the husband is from outside the family (*mšpḥh*).[1]

The second point is that a restriction on the choice of husband would be the natural and vital corollary to a rule of automatic succession.[2] Such is the case in the Laws of Gortyn from fifth-century Crete, where the unquestioned right of the daughter to inherit in the absence of sons is complemented by her obligation to marry a relative of her father, the implementation of which is the subject of regulations of astonishing detail and complexity.[3]

The biblical rule in its present formulation is a product of the Priestly source, which on the conventional view of its date would be a near contemporary of the Greek sources. It is possible, then, that here as elsewhere[4] they share a development in the law, one reflected in the difference between the petition of the biblical narrative and the rigid rule that is to be imposed in the future.

1. On the use of 'tribe' in this narrative, see the section 'Inheritance' in the Introduction.

2. If the daughter is awarded a dowry, but not the whole estate, an obvious possibility under a discretionary regime, the limitation on her marriage is unnecessary.

3. Col. VII 15–IX 2. Athenian law of the 4th century likewise had complex provisions based upon the same principles. See A. Harrison, *The Law of Athens* (Oxford, 1968), pp. 9-12, 112-13, 132-38.

4. A. Rofé ('The History of the Cities of Refuge in Biblical Law', in *Studies in Bible* (ed. S. Japhet; Scripta Hierosolymitana, 31; Jerusalem, 1986), pp. 237-39) suggests the use of exile in the Priestly source may have been due to Greek influence. While disagreeing on the specific question of influence, we agree that the sources do appear to share a common conception of exile.

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